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*AN COMHCHOISTE UM CHOIMIRCE SHÓISIALACH, FORBAIRT POBAIL AGUS
TUAITHE AGUS NA HOILEÁIN
Tuarascáil ar an Scém Íocaíochta Dífhostaíochta Phaindéimí (PUP)*

**JOINT COMMITTEE ON SOCIAL PROTECTION, COMMUNITY AND RURAL
DEVELOPMENT AND THE ISLANDS**

Report on The Pandemic Unemployment Payment Scheme (PUP)

33/JCSPCRDI/01/2020

December 2020

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Committee Membership

Deputy Jackie Cahill - FF (JC)



Deputy Paul Donnelly – SF (PD)



Deputy Joe Carey - Fine Gael (JC)



Deputy Charles Flanagan – FG (CF)



Deputy Marc Ó Cathasaigh GP (MO)



Deputy Denis Naughten – Independent; Chairperson



Deputy Joan Collins - Independent 4 Change (JC)



Senator Paddy Burke – FG (PB)



Deputy Éamon Ó Cuív – FF(EO)



Senator Róisín Garvey – GP (RG)



Senator Paul Gavan - SF (PG)



Chairperson's Foreword

The Joint Committee on Social Protection, Community and Rural Development, and the Islands, has completed its consideration of the Pandemic Unemployment Scheme.

It is clear to the Joint Committee that the administration of the Pandemic Unemployment Payment scheme has raised a lot of questions for those impacted by the restrictions in place since March 2020.



The Joint Committee undertook a detailed examination and review of the Scheme, as administered by the Department of Social Protection. The Committee sought public submissions and held a public hearing with officials from the Department of Social Protection, Community and Rural Development. The full transcript of that hearing is appended to this Report, and the strongly expressed views of Members of the Joint Committee are contained therein and have been brought to the attention of the Minister for Social Protection for attention and appropriate actions.

As part of the Joint Committee's work we also examined the Temporary Wage Subsidy Scheme. The Joint Committee are of the view that **there have been clear** anomalies in the operation of the Pandemic Unemployment Payment as well as its interaction with other supports such as the Temporary/Employment Wage Subsidy Schemes, since March 2020, with thousands of people and families impacted.

In total, the Joint Committee received 69 submissions from various stakeholders. Submissions were received from Maynooth University Social Science Institute; Free Legal Aid Centres (FLAC); Music and Entertainment Association of Ireland (MEAI); Irish Congress of Trade Union (ICTU); Fórsa Trade Union; Deputy Padraic Mac Lochlainn; Deputy Joan Collins; Deputy Mattie McGrath; Senator Roísín Garvey; Ms Deirdre Twohig, Independent Tour Guide; and numerous submissions from Aer Lingus staff.

These submissions are also appended to this Report and have been forwarded to the Minister for appropriate attention. The Joint Committee fully endorses the recommendations made in these submissions for appropriate actions.

The Joint Committee requests that particular attention be given to the submission made by the Music and Entertainment Association of Ireland (MEAI). The Joint Committee separately met with Senator Frances Black who passionately made representations to Committee Members on behalf the industry, which has been tragically devastated by the impact of the pandemic since last March, a situation which is likely to continue well into 2021 and possibly longer.

To quote President Higgins recently, "the beauty, the joy and the irrefutable cultural importance of what our musicians collectively give to us is immeasurable. Over the course of past nine months, they have not, either individually or collectively, been able to fulfil their creative destiny, or to earn a living by playing their music live."

The Joint Committee strongly endorses the recommendations submitted by the MEAI and is of the opinion that special status should be granted to our musicians and entertainers, as an industry which has been decimated and continues to be adversely affected by the pandemic, perhaps more than any other sector in society.

The Joint Committee submits twelve key recommendations on the operation of the Pandemic Unemployment Payment Scheme.

Finally, and behalf of all Members of the Joint Committee, I would like to record our gratitude and pay tribute to all of the staff in the Department of Social Protection, Community and Rural Development, who have been involved at all levels in the administration of the Pandemic Unemployment Payment Scheme since its inception in March 2020.

It has been a mammoth undertaking for the Department, and the staff of the Department are to be commended on their professionalism and contribution to public service.

Denis Naughten TD,
Chairperson

14th December 2020

Key Recommendations of Joint Committee

The Joint Committee has expressed serious concerns with regard to the abolition mortgage interest supplement particularly for families who have been forced out of work due Covid 19. It recommends that a mortgage interest supplement should be re-establish as a matter of urgency

The Department must immediately review the interaction of the PUP with the wage subsidy schemes operated by the Department of Finance. It is the view of the Joint Committee that it is preferable for employees to maintain their employment income and direct connection with their employer rather than having to avail of PUP. In order to achieve this objective every effort must be made to assist employers in keeping employees on their books rather than forcing them to avail of PUP.

The Department should review the imposition of a requirement to “genuinely seek work” while in receipt of the Covid PUP. At the very least, regulations should be introduced setting out how this criteria is to be applied to claimants for the payment which take into account the fact that many claimants have limited access to childcare and, further, that many claimants for the payment are temporarily laid-off and have every expectation of resuming their previous employment or self-employment.

The Joint Committee recommends that in the event that in the event of a resurgence of Covid-19 or in the event of another similar major occurrence requiring the introduction of emergency social welfare measures that any such measures are introduced by way of primary legislation so as to provide a clear legislative basis for any such measures and to provide clarity as to who is eligible to avail of any new social welfare scheme.

The Joint Committee recognises the measures taken by the Minister to extend the date for the receipt of applications under the PUP until March 2021.

The Joint Committee believes that the current earnings cap of €480 in a 4 week period is too inflexible to meet the needs of the entertainment industry and instead recommends that the €480 threshold would be based on average net earnings over the full period that an applicant is in receipt of the PUP, which would be in line with the treatment of income under Farm Assist etc.

The Joint Committee recommends that self-employed persons over the age of 66, who are not eligible for a State Pension, would be deemed eligible for the PUP.

The Joint Committee recommends that persons under the age of 18, who have been in paid employment and paying income tax and PRSI should not be excluded to qualify for the Pandemic Unemployment Payment Scheme.

The Joint Committee recommends that persons should be allowed to avail of returning to short term education, either full time or part time, for a period of up to twelve months without losing eligibility for the Pandemic Unemployment Payment Scheme.

The Joint Committee recommends that the administration of the Rent Supplement Scheme needs to be streamlined in light of delays in processing applications.

The Joint Committee recommends that dedicated resources be established within the Department to deal with the unique situation encountered by the Music and Entertainment industry and to speed up delays in processing of payments. Given the unique nature of the industry, the Joint Committee also recommends that payment of the Pandemic Unemployment Payment Scheme continues, at the higher level to those who qualify, until the industry opens up again post pandemic.

The Joint Committee notes the Department’s commitment to resolve difficulties encountered by staff in Aer Lingus getting their applications for payments processed and recommends that the Department engages with the company to ensure such difficulties are not repeated in the future.

Appendix 1 Transcripts of Committee meeting on PUP 25 Nov 2020

DÁIL ÉIREANN

**AN COMHCHOISTE UM CHOIMIRCE SHÓISÍALACH, FORBAIRT POBAIL AGUS TUAITHE AGUS
NA HOILEÁIN**

**JOINT COMMITTEE ON SOCIAL PROTECTION, COMMUNITY AND RURAL DEVELOPMENT
AND THE ISLANDS**

Dé Céadaoin, 25 Samhain 2020

Wednesday, 25 November 2020

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Joe Carey,	Róisín Garvey,
Claire Kerrane,	Eugene Murphy,
Éamon Ó Cuív.	Mark Wall.

I láthair / In attendance: Deputy Matt Shanahan.

Teachta / Deputy Denis Naughten sa Chathaoir / in the Chair.

Pandemic Unemployment Payment Scheme: Department of Social Protection

Chairman: I ask witnesses to turn off their mobile phones as they interfere with the recording equipment. I also remind members to sanitise their desk area and seat when leaving the committee room. The main item on our agenda is our consideration of the pandemic unemployment payment scheme. I welcome officials from the Department of Social Protection, Mr. Rónán Hession and Ms Teresa Leonard, both assistant secretaries, who are joining us remotely. They are very welcome.

Speaking not just for members of the committee but for all Members of the Oireachtas, I thank the witnesses and each and every member of their teams for the work they have been doing over the past nine months in processing claims for the pandemic unemployment payment as expeditiously as possible, as well as for dealing with queries raised by Members of the Oireachtas in a prompt manner. It is not unusual for any of us to receive replies from officials in the Department late in the evening or on Saturdays indicating that documentation is outstanding or that something needs to be addressed. I take this opportunity to thank each and every one of the staff for their work and their commitment.

The committee recently commenced an examination and a review of the pandemic unemployment payment scheme as administered by the Department of Social Protection and has sought public submissions on this matter. Today's engagement will assist the committee as we work to present a report on our findings to the Minister in advance of the social welfare Bill coming before the Houses. As part of our ongoing work, we are also examining the interaction of the pandemic unemployment payment with the temporary wage subsidy scheme and the employment wage subsidy scheme. We will publish submissions on the committee's website. There have been clear anomalies in the operation of the pandemic unemployment payment, which is understandable as it was introduced literally overnight. There have also been issues in its interaction with the various wage subsidy schemes since those supports were introduced last March, and thousands of people and families have been impacted. We look forward to engaging with the witnesses on these matters.

Members of the committee and of the Houses have absolute privilege in respect of statements made to either House of the Oireachtas or before a committee. By virtue of section 17(2)

(1) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they are required to give to a committee. However, if during the course of the committee proceedings they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are also directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a Member of either House of the Oireachtas, a person outside the Houses or an official by name or in such a way that would make him or her identifiable.

I now call Mr. Hession to make an opening statement of five minutes. If he so wishes and if it makes it a little easier for him, he may take his mask off.

Mr. Rónán Hession: I thank the Chairman kindly for his opening remarks on the Depart-

ment and the work being done by our teams. I thank him and members of the committee for the invitation to attend to discuss the pandemic unemployment payment scheme, or the PUP, as it is known. My name is Rónán Hession and I am the assistant secretary general in the Department of Social Protection with responsibility for working-age policy. I am joined by my colleague, Teresa Leonard, who is assistant secretary general with responsibility for operational matters.

The PUP was introduced in March of this year as an emergency response to the huge and sudden increase in the loss of employment arising from the imposition of necessary public health restrictions to address the Covid-19 pandemic. It was introduced first at a rate of €203 per week as a means to fast-track payment of an unprecedented volume of claims. The intention was that claims from people with qualified adults or dependants would then be prioritised and re-rated at an appropriate higher rate of payment. When, given the claim load, it became evident that this would not be possible, the rate of payment was increased to €350 and aligned with the rate for a two-person household on a standard jobseeker claim. This payment rate was also broadly equivalent to the net weekly earnings in the two most affected sectors, namely re-tail and hospitality. Within two weeks of the PUP being announced, we received and processed 389,000 applications. This was equivalent to a 19-month claim load in one fortnight. By the peak on 5 May, we were issuing payments to 602,000 people at a cost of some €209 million per week. By that time more than 1.1 million people were in receipt of State supports either via the live register, the PUP or the temporary wage subsidy scheme.

Changes were subsequently introduced in June to link the payment rate to prior earnings, and since the move to level 5 restrictions the PUP is paid at four rates as follows. For those with prior weekly earnings of less than €200 per week, the rate of the PUP is €203 per week. On average, this is 190% of prior earnings. For those with prior weekly earnings between €200 and €299.99 per week the rate of the PUP is €250 per week. On average, this is 106% of prior earnings. For those with prior weekly earnings between €300 and €399.99 per week the rate of the PUP is €300 per week. On average, this is 90% of prior earnings. A person who previously earned €400 or more per week receives a PUP rate of €350 per week. On average, this is 58% of prior earnings.

In addition to the changes to payment rates, and as outlined in briefing material provided last week, the Department has, since the PUP was introduced, enhanced the processes and systems used to verify prior employment status and earnings. All claims are now checked against Revenue Commissioners records of employment and earnings to validate prior employment status and to set the correct rate of payment. Where a person's employment status or earnings cannot be validated, he or she is contacted and invited to submit supplementary information to enable us to check his or her status and to process the claim to completion.

On 16 November we issued payments valued at €103.8 million to 350,072 people in receipt of the PUP. To date, numbers in receipt of the PUP have therefore increased by just under 150,000 since restrictions were introduced at the start of October and by just under 106,000 since the introduction of level 5 restrictions on 7 October. These figures are in addition to the 203,172 people who were reported as being on the live register as of the end of October.

From a sectoral perspective, those most impacted sectors, measured in terms of PUP recipients during the initial onset of the pandemic, included accommodation and food, wholesale and retail, and construction. All three recovered to varying degrees during the lifting

of restrictions over the summer. With the introduction of restrictions, the accommodation and food sector is impacted to the most significant extent, with wholesale and retail impacted to a lesser extent than may have been anticipated.

From a regional perspective, while the introduction of level 5 restrictions has seen increases across all regions, PUP numbers remain below peak levels in all areas.

In age terms, under-25s make up a proportionately higher share of current recipients than was the case at the peak. Given the high concentration of young workers in hospitality and retail, this is unsurprising.

As for gender, at the peak just over 40% of recipients were female. The most recent data, which capture the initial impact of level 5 restrictions, indicate that the proportion of males and females on the PUP is now almost equal. This is likely a consequence of the different sectoral composition of those on the PUP compared with the initial peak. For example, construction, which is a largely male-dominated industry, employs more than 148,000 people across the country and was closed at the initial phases but remains open under level 5.

A number of changes have been made to the PUP scheme in recent weeks. Following the announcement in the budget, it is now possible for a self-employed person to earn up to €480 in a four-week period without it affecting his or her PUP claim. This addresses concerns raised in particular by taxi drivers and those in the arts and culture sector. We have also revised the reference period for the calculation of prior earnings in order that those with employment records since February can receive the appropriate PUP payment.

We have a number of important projects under way, including payment of the Christmas bonus. The bonus will be paid at 100% of the relevant PUP rate of payment. The PUP bonus week is the entitlement week ending 3 December 2020. A person who has been in continuous receipt of PUP since Friday, 7 August, will satisfy that condition. In addition, any person in receipt of the PUP for the week ending 3 December who has returned to work and who has an aggregate of at least 17 weeks on the PUP will also qualify for the bonus on the pay date of 8 December. In other words, the 17 weeks do not have to be continuous.

Before I conclude, I wish to pay tribute to the staff within the Department who have worked tirelessly since March to ensure that those affected by the Covid restrictions receive the financial support they need. This has been demanding at a time when, as a Department, we have had to adapt our work practices in order to prioritise the safety and well-being of our staff and customers. We have provided briefing to the committee setting out further detail on the scheme, which I hope is useful in informing the committee's deliberations. We are happy to take any questions.

Chairman: I thank Mr. Hession. Two of the big issues that have been raised with committee members have been the position of Aer Lingus staff and getting their applications processed and the music and entertainment industry. Perhaps the witnesses could elaborate on those two issues at the outset and clarify them for members before we go into questions and answers.

Mr. Rónán Hession: I will address the arts and culture issue and then ask my colleague to speak on the Aer Lingus issue. I think approximately 12,000 people from the arts and culture sector are currently claiming the PUP. The size of the sector overall is approximately 55,000 people, according to the CSO data. At the peak approximately 14,000 were on the PUP, so the

current figure is slightly below the peak. A number of different issues have been raised with us by this sector. Many of the people in the sector are freelance, and there was a question around their ability to do a small amount of work without losing the PUP. Originally, when we were interpreting the legislation, we had given advice and guidance that people were able to do a small amount of work if it was intermittent, sporadic, etc. In response to concerns raised by the sector, one of the measures announced in the budget was the introduction of a €480 earnings limit for those people so they had clarity on what they could earn while still retaining their PUP payments. There are further measures for people who earn beyond that limit through the part-time job incentive to allow them to return to a position of fuller employment. There is a wide range of issues in this sector. The Minister, Deputy Martin, has published a task force report which addresses a wide range of issues beyond social welfare, going into what that sector needs. Clearly, the sector has been heavily impacted by the pandemic and faces a number of challenges, but overall we have tried to continue positive and constructive engagement with it. Overall, we have tried to continue to engage positively and constructively with the sector. I was a member of the task force on arts and culture. We have had a good dialogue over several months and we have tried to be responsive to issues that have been raised.

I will ask my colleague, Ms Teresa Leonard, to speak on the Aer Lingus issue. I am happy to answer any further questions on this area.

Ms Teresa Leonard: I would like to refer to Aer Lingus staff, their applications for the Covid-19 pandemic unemployment payment and the controversy around that issue during the summer. There are several things at stake here. We have been actively involved with the Aer Lingus staff since 1 September. All the applications we have received in that period have now been processed. More than 3,200 cases are involved. To put the whole issue in context, two schemes to support employers and employees in employment are currently operating. The temporary Covid-19 wage subsidy scheme was introduced early this year. Aer Lingus took part and its employees were paid using that scheme. The temporary Covid-19 wage subsidy scheme is not compatible with the Covid-19 pandemic unemployment payment. A claimant cannot receive both. The temporary Covid-19 wage subsidy scheme marks a recipient as employed. At that point, some Aer Lingus employees made applications to the Department which have not yet been processed. On 1 September the temporary Covid-19 wage subsidy scheme was replaced by the employment wage subsidy scheme, which is payable to the employer. That payment is compatible with jobseeker's benefit. The Department has processed all of those claims, which I referred to initially.

We have now set up a group of deciding officers to process the claims from the period prior to 1 September. Each of these claims is quite complex and must be examined individually. We must determine whether a claimant received the temporary Covid-19 wage subsidy scheme, the periods of time for which he or she did so and the periods for which he or she was employed. Employers paid remuneration to some employees for some periods and actually increased their wages. The temporary Covid-19 wage subsidy scheme allowed employers to top up employees' wages. As such, claims made prior to 1 September are very complicated. The only way to examine them with any thoroughness is to set up a group of deciding officers, which is now working on them one by one. That work commenced last week. We will go through each and every claim and determine an outcome for each individual.

We have also made an arrangement with Aer Lingus. If we ask its employees for particular

information, Aer Lingus is aware of what we require and will immediately supply it to the claimant via email. It will take time, but we hope to get through the claims in the next several weeks.

Deputy Claire Kerrane: I thank Mr. Hession for his opening statement. I would like to ask a couple of questions arising from the statement and the briefing document. The initial rate of the Covid-19 pandemic unemployment payment was €203. It quickly moved to €350. Would it be fair to say that it was acknowledged that a worker who had lost his or her job could not live on €203, particularly in light of the fact that the highest rate of €350 just about covers half of the average worker's prior earnings?

It was announced in the recent budget that people could earn €480 per four-week period and retain the Covid-19 pandemic unemployment payment. Do the witnesses have any idea how many workers have taken advantage of that and in which sectors it has been utilised? That was referenced in the submission to this committee from the Irish Congress of Trade Unions, ICTU. The cuts, or "calibrations" as I think they have been called, are due to be introduced in February. The Covid-19 pandemic unemployment payment rates will be reduced to €250 and €203. Has that been reconsidered in light of recipients' prior earnings?

According to emails I have received, the issue for Aer Lingus workers did not so much concern the payments and their administration. Employees were being actively blocked from getting their forms signed by their employer. I raised this with the Minister for Social Protection, Deputy Heather Humphreys, and she acknowledged that the Department had spoken to Aer Lingus on several occasions. That kind of carry-on sets a very dangerous precedent. Any future engagement with Aer Lingus must include how these things are resolved with employees. All TDs received horrific emails from Aer Lingus employees who were in really difficult situations. We do not want to see that happening again.

The briefing document makes several references to the fact that those currently on the €203 payment, who had prior earnings of €200 or less, are better off than when they were at work. I have heard that said a lot and I do not think it is a good thing. It points to much bigger issues of working poverty and the prevalence of low pay. I do not like that kind of language and I have heard it quite a bit. Since the legislation came in one of the qualifying conditions has been that a claimant must be genuinely seeking work. How is that monitored? Have referrals been made to job activation schemes? Can the witnesses give us a little bit more information on what is actually required for a claimant to show that he or she is genuinely seeking work? Are there sanctions or penalties if that requirement is not met, or are such measures being considered for the future?

Travel outside the State is also referenced in the briefing document. In its submission to this committee, representatives of ICTU stated that they had sought clarification on the criteria used to identify which flights were to be checked by departmental officials. People were really shocked by that operation when it was reported in the news. I would like more information on who decided on that operation and how it worked. I would also like an answer to ICTU's question.

I have a further question about how claimants apply for the Covid-19 pandemic unemployment payment. What was the rationale for removing the form from the website and asking claimants to send an email requesting it? I welcome the efforts to pay arrears before the end of the year. Do the witnesses have any idea of how many recipients will be due

arrears? Can they confirm that they will be paid before the end of the year? I would like to clarify that to receive the Christmas bonus, a claimant does not need to be on the Covid-19 pandemic unemployment payment the week it is paid, once he or she has been previously been on it for four months, continuously or otherwise. I think the bonus is issued on the week of 7 December. Does a claimant need to be on the payment on that week to receive the Christmas bonus?

There has been a lot of mention of the social insurance fund. The Parliamentary Budget Office gave us a great briefing on these matters. How concerned should we be about the social insurance fund? Is the Department looking at any ways to fix what will obviously be a big issue for the fund?

Ms Teresa Leonard: I thank the Deputy. I will take some of the operational questions and then yield to Mr. Hession. We may both comment on some of those issues. The Deputy's first question was about the change in the rate of payment from €203 to €350. I would like to provide some context for the change. We introduced the Covid-19 pandemic unemployment payment very quickly, as the committee acknowledged. The initial rate was €203, which was the standard rate of jobseeker's allowance at the time. The Covid-19 pandemic unemployment payment was initially introduced to ensure that people stayed at home when they were expected to or to compensate them when their employment disappeared. With that in mind, the payment was increased to €350 to make it equivalent to the rate for a two-family household and to make sure people did not feel they had to go to work. Mr. Hession will explain the work issues a bit more.

We have been in constant communication with Aer Lingus on this issue. The company is very aware of what will be needed if an employee approaches them seeking information for the review we are carrying out. It has agreed the documentation with us, meaning there is no issue with that matter as far as we are concerned at this point.

The genuinely seeking work, GSW, conditionality has been brought into the pandemic unemployment payment, PUP. It is being treated lightly and sensitively. In fairness, we are not pursuing anybody at this point in time. Activation services are available to anybody on PUP, should he or she require them. However, we are not actively at that nor are we applying any penalties or reviews now.

It is a scheme, however, for which people are available for work. That is part of the conditionality for it. As of now, we have not done any review of anybody. We are encouraging people, should they wish, to get any activation services as they are available to them. We have not formally invited anybody to our activation services, however.

The arrears project is well in hand at this point. We have done a huge amount of work over the past number of months to get it organised and ready for payment. We hope to make a payment next week to most customers who are due arrears. There will be some particular candidates who may not get arrears, however, because of the complexity of it and that the relevant information is not fully available to pay them should they have an entitlement.

It is important that the committee realises the complexity of doing arrears. When calculating and issuing arrears for customers, we have to look back over the customer's whole record. It is important to bear in mind that we have had over 800,000 customers with just under 1.4 million claims for PUP and we have issued over 13 million payments so far. With that in mind, in the same period, the temporary wage subsidy scheme is in place, which is not compatible with PUP, but there was an interaction between the two. Some customers have

blanks in their records in that they may have been employed during that period and may have received the temporary wage subsidy scheme. If they missed a week's period, they may have been paid by the community welfare service. We have to check back on those payments over that period.

In addition to that, if a payment fell out, we did pay them the following week. PUP is not compatible with other primary schemes with the exception of some schemes like carer's allowance, disability allowance, one-parent family and working family payments. We have paid it in conjunction with these. There are other schemes, such as jobseeker's and illness benefit, with which it is not compatible. In those cases, we have to check to ensure somebody was not in receipt of those during the same period.

The actual complexity of arrears and getting them out the door lies with the comparisons and checking we have to do to make sure we are actually paying people appropriately, not overpaying or underpaying them. We hope next week that the majority of cases will be paid. There will be a small minority which we will have to do manually. These will follow. Due to the complexity of their actual cases, we feel an officer needs to look at them because we cannot programme any solution to pay them. That will be done manually.

Somewhere between 250,000 and 300,000 is our expected number of customers to be paid. We will know more later on in the week.

The Christmas bonus, as my colleague stated in his opening statement, will be paid on 8 December. It is for anybody who has to be on PUP on the week ending 3 December. The 17-week period to qualify for the bonus payment can be made up of any period in the past 36 weeks. This is week 36. Yesterday, we paid PUP for that week. It is any week in that. If there was a period of unemployment in that period, that can be used to add up to the actual 17 weeks. It is very much a case of working through the 17 weeks and giving it to people. However, they have to be on PUP the week of 3 December. Even if they sign off to go back to work, anytime during the week, they will get their bonus payment.

Chairman: Will Ms Leonard clarify her last comment on that? It is quite significant in terms of the lifting of the lockdown next week. If people sign on any day next week, will they be eligible for it or must they have signed on 3 December?

Ms Teresa Leonard: The PUP calculated arrears week works from a Friday morning to a Thursday evening. It is anybody who is part of the PUP in that week from this Friday coming until 3 December. Anybody who has had any day that they are not working in that period and only signs off to go back to work any day in the week will still get their PUP, provided they sign off that they are going back to work. If ones sign off to go back to work on Monday, 30 November, one will still get one's PUP because one is actually on the scheme in the week ending on 3 December. PUP is paid by weeks, not by days.

Mr. Rónán Hession: The €203 rate was introduced at the jobseeker rate initially. The idea at that stage was that PUP would be a six-week scheme. We needed to get money out to people quickly before we were able to put them on to a proper jobseeker scheme. That was the standard rate. The movement to the €350 rate was not so much a commentary on the adequacy of the €203 rate but more a recognition of the fact that it would take longer to do that and people had dependants and so forth.

We do not have numbers on the people availing of the €480 threshold under PUP. People

are not required to report that to us. They are required to keep records in case we need to check that. That is why we do not have details available on that.

On the February rate change, the Minister said during the budget that the question will be revisited towards the end of year. Over the coming weeks, the Government will have to assess the current situation in light of the trajectory of the pandemic and the economic situation and then take a position on that February change.

On the question of the working poor and the number on the €203 rate, given the level of the minimum wage at €10.10 an hour and moving to an extra increase in January, the chances are that the people in that cohort are part-time workers. One can only get 20 hours on the minimum wage to be under the €203 threshold. Until recently, the Department was responsible for the national minimum wage. We are conscious of the issues of low-wage jobs, employment rights and ensuring we avoid in-work poverty. Many of our payments continue to be paid as people work, such as working family and jobseeker payments. They allow for a degree of work. We are always mindful of that issue. The €203 threshold is more likely, given the statutory minimum wage, to be a reflection of part-time workers.

On travel, we have not done inspections at airports for quite a number of months and we do not plan to resume them. In the case of the flights that were inspected, a factor was the low level of flights coming in and out of the country at the time. We also did inspections at ports at that time. In terms of the criteria, it was a factor of the inspectors operating at the airports at the time, looking at what flights were available and making a call on the ground.

Since the legislation came in on 5 August, the full cost of PUP has been drawn from the Social Insurance Fund, SIF. The total cost of PUP for this year is €5 billion, along with €94 million. The latter is largely the budget for the Christmas bonus. We are up to €4.3 billion at the moment. Clearly, this is a big draw on the SIF which we had not expected at the beginning of 2020. That clearly is an issue which needs to be examined.

Deputy Éamon Ó Cuív: I join in thanking the staff of the Department of Social Protection. We certainly get a good and interactive service, which is important. The staff are willing to talk to Oireachtas Members as they recognise we represent people. When we get on to the Department on behalf of constituents, we obviously have their permission. It makes our life a lot easier. It is a pity that not all other agencies in the State operate with the same kinds of interactions. It is not only that the Department comes back quickly, but it also comes back with comprehensive answers when we ask further questions. There is a great willingness to deal in detail with the kinds of issues that arise. Social welfare, by its nature, is complex.

I have a few questions. One of the most significant things that jumps out to me is that those who are getting the full rate of €350 on the pandemic unemployment payment, PUP, are only, on average, getting 58% of what they were earning previously. That is a significant loss of income. I have mentioned this time and again. Some of that cohort are renting and entitled to rent supplement, as far as I understand, if they qualify under a means test. However, further up the income scale, a fair number of the people affected would have significant mortgages and young families. I understand that such a person would not be entitled to child dependent allowance and there is no mortgage interest supplement. I do not know if our guests covered the philosophy of the policy when it was introduced but was consideration given to reintroducing a scheme that existed for as long as I can remember until 2014, namely, mortgage interest supplement? That would have been an option instead of depending on the banks.

We all know how kind banks are, as charitable organisations. They are not. They are run by hard-headed business people and if someone gets a moratorium on repayments, the banks will come after them, looking for that money back. I am thinking of the cohort of people who might have been on €1,000 a week and paying a big proportion of that on their mortgage, people with a family and the costs that go with it. Those people were hit by the pandemic and, we now know, are only getting, on average, 58% of what they were earning. The higher up the pay scale one goes, the lower that percentage. The percentage is higher the nearer a claimant was to earnings of €300 or €400 a week. Was consideration given to the reintroduction of mortgage interest supplement as a policy instrument?

I do not know whether our guests have the figures I am going to ask them about now but it is a matter about which we should think. As Mr. Hession pointed out, there is a minimum wage in the country and any company that was not paying the minimum wage was breaking the law. That means that people who were earning less than €350 were, by definition, part-time workers. That is a mathematical certainty. Do we have any information as to how many of those are voluntarily part-time workers? There are quite a number of those. I often come across people who choose, for family circumstances or whatever, to work on a part-time basis. On the other hand, how many are forced part-time workers - in other words, workers to whom the employer does not give the work and so the worker has no choice other than to be a part-time employee? There is also a third cohort. Do we have any idea how many part-time workers were students who were working to try to put themselves through college? Those people worked particularly in fast food, retail and so on and lost out on that income on which they were totally dependent in order to keep the ship afloat while they were trying to get an education. Those figures would tell us something about student grants and a whole lot of other things that are not the immediate concern of our guests. We should learn from everything that has been going on with the PUP. There are a lot of good lessons, and some hard lessons, to be learned.

The PUP was due to end and I now hear noises that this might not happen. Can our guests confirm that if there are to be continuing lockdowns of sectors of the economy, or, for example, restaurants and so-called wet pubs are allowed to open over Christmas but are locked down again in January and February, that there will be a PUP for which workers in those affected areas will be able to reapply? Workers might move away from the PUP before Christmas but be forced be back to it in the new year, although please God that does not happen. Can our guests confirm that such people will be covered by the PUP?

I thought it was strange that the “genuinely seeking work” caveat came in, whoever was responsible. I know it was said that the rule is not being applied, and I welcome that, but I hate rules that are not applied because some day, somebody will wake up and decide to apply it. When asked why they are applying it, they can then say it was the rule for the past six months, or whatever. My view is that if there is a rule, apply it. If a rule is not going to be applied, do not have it. Otherwise, we get into the area of *Alice in Wonderland* where we have a rule but do not apply it before some day, someone suddenly starts applying it, saying that we have had this rule for ages. People are concerned about this. Consider somebody who had a good job for all their life and worked for the past 30 years in a restaurant. The job will be there for them when the restaurant reopens, please God. The person does not need a job because they have one, albeit they are out of work in the short term, in the greater scheme of things, because of a situation that will not happen again on a recurring basis. It is a pity that the caveat was put in. These sorts of things seem perennially to get thrown in and it does not seem to make sense.

A valid question was raised about the Social Insurance Fund. Back in 2010, the fund ran dry. In the noughties, there was quite a lot of accumulated savings in the Social Insurance Fund. In other words, the social contributions that were being put aside for the rainy day, pension budgets and so on exceeded expenditure out of the fund. As a result of the downturn between 2008 and 2012, the Social Insurance Fund ran dry in 2010. The Exchequer gave advances at that time and if one looks at Exchequer returns for the following few years, one can see the advances and their repayment. Some time in the middle of the 2010s, all the money was paid back and no advances were needed during the year. Can the witnesses tell us how much was saved in the Social Insurance Fund? In other words, what was it worth on 1 January 2020, before we were hit by the Covid-19 tsunami? The Department has stated that €5 billion over and above has been spent. Is the fund still in credit or has it gone into deficit? If it is in deficit, I presume the Exchequer is temporarily funding it and will recoup its investment in the Social Insurance Fund as things get back to normal. Those are my questions.

Mr. Rónán Hession: I will quickly run through them because there are some housing issues there that I may be able to deal with up front and my colleague might come in on anything I miss. We may have to come back to the Deputy on one or two points.

The Deputy made a legitimate point about the position of a cohort of those receiving the PUP at a rate of €350. Approximately 46% of PUP claimants are on that €350 rate and, even with that support, we recognise there is a significant drop in income for a large number of people in receipt of the payment. The means or income test for rent supplement was adjusted to reflect the payment of PUP at the €350 rate so we were not giving people a PUP which was affecting or knocking out their rent supplement payment. At the start of the year, rent supplement was approximately €15,000 or €16,000. It went up to over €20,000 and it now back to just under €20,000.

The Deputy asked about reinstating mortgage interest supplement. He is right that the scheme stopped to new entrants in 2014. It is not an issue at which we looked. I know that there have been various other statutory protections introduced by the Minister responsible for housing to try to address the position for people who are under pressure with their mortgages. The mortgage interest supplement was not a part of our thinking at that stage of the process. To be honest, in terms of the size of the problem we were dealing with, our immediate focus was primarily to lead on the income supports and try to make sure we could address those. The wider housing complexity would have been difficult for us to take on at that stage. I do not have the figures here with me on unemployment - voluntary, forced or otherwise - but I know there are figures produced by the CSO on the degree of underemployment among those who are currently working part-time but have the capacity or ability to work more than that. I am happy to send those figures to the committee after the meeting. The number of students receiving the PUP is around 26,000. As the Deputy has said, there were many people who were studying but also working to try to support themselves through college. Like others, they lost their employment after 13 March because of the pandemic. They have an entitlement to the PUP and are being paid at a rate that is linked to their prior rate of pay. I can confirm to the Deputy that, arising from a decision taken yesterday by the Government and announced by the Minister, the PUP will remain open to new applicants until the end of March 2021. In cases like that outlined by the Deputy, where people go back to work for the Christmas period and then go into unemployment, the PUP will be available for them to submit a claim after that period.

I note the Deputy's points on the genuinely seeking work rule. To some extent, I cannot comment on the merits of Government policy on this issue other than to say that the PUP is an unemployment payment with the standard features that entails, and the genuinely seeking work rule is part of that. I accept Deputy's point that a rule is a rule and we should not decide in a spontaneous way when to apply it or not to apply it. Bearing in mind that the pandemic is a very different economic environment, however, we do not think it is a problem for a person to fail to look for work while their sector is closed. If a person is working in the hospitality sector, for example, their job is not available to them because their workplace is closed due to the shutdown of the wider sector. We take a proportionate view of that.

I do not have the figures with me on the opening balance of the social insurance fund, but we will provide the Deputy with those figures in a follow-up response. Perhaps my colleague, Ms Leonard, has something to add.

Ms Teresa Leonard: I would like to make a point in respect of the €350 rate and the actual income it amounts to. The €350 is net income, so the annual gross figure would be equivalent to approximately €20,000. I will return to the issue of the genuinely seeking work rule because I did not do a great job of answering the question the first time. I was going to go back and clarify the matter for the Deputy. Although the environment and the times we are in mean that we are perhaps not applying the genuinely seeking work rule as religiously as we normally would, it is there and it is a rule that is applicable to the PUP scheme. I should say that activation supports are available to people if they want to interact with them directly. In the new year it is likely that we will do something on activation in respect of PUP recipients.

Chairman: I will now move to other members of the committee. I gave a bit more discretion to the two lead questioners earlier, so I will try and keep things tighter now.

Senator Mark Wall: I would like to be associated with the comments of other members of the committee on the work of the staff. The statistic that has struck me this morning from the two witnesses is that 18 months of work was carried out in two weeks. That is a tremendous achievement. The staff working in the Department are an asset. I would like to express my thanks to them for their work, and also for their responses to the queries we raise.

Mr. Hession said that he was part of the task force on the arts sector. He has told us that 12,000 people in that sector are currently in receipt of the PUP, which is just over 20% of the CSO figures. Through his work as a member of this task force, does he have any idea what the other artists and people involved in the arts sector are on at the moment? Are they struggling? Are there issues with PUP that are causing them not to apply for it? It seems to me that 20% is a very low figure. At its height it was only 25%, which is low considering the emails we have received from people in the arts sector about the issues and concerns they have. Has the task force come up with anything else in relation to the inability of artists and others in this sector to apply for the PUP?

I have another question, which I have raised before at this committee. It concerns those under the age of 18 who are paying tax and PRSI, but do not qualify for the PUP because it is confined to those over 18 years of age. Are any figures available on the number of 17-year-olds who may have lost their jobs but are not in receipt of the PUP? Perhaps the witnesses have some figures on that. It has been raised with me by a number of people that young people who have paid their taxes are not in receipt of the PUP.

Deputy Ó Cuív mentioned the issue of child dependants. His question was not answered in the last round of questioning, so perhaps it could be answered now. It is a serious concern for me, particularly in respect of low-income families. I had a case yesterday which concerned somebody who is in receipt of €203 - the lowest PUP rate - and is trying to survive with two children on this amount. This person cannot get a child dependant payment. Is there any other payment for which they can apply to bring up their income level, or anything else they can do? It does seem that receiving a payment of €203 with two children, and everything that goes along with Christmas, is a very low payment. Perhaps the witnesses could address that issue.

I share the concerns raised by others on the genuinely seeking work rule. Has an instruction been given to the staff of the Department's local offices not to enforce this rule? It is important that this is clarified today, because we do not want one member of staff to be telling applicants that it is being enforced because the rule is there, while another member of staff is telling them that it is not being enforced. There must be one rule for all. Like other members, I am asking for confirmation that that is the rule.

Do the witnesses have any comment on how the social insurance fund might affect the State pension age and qualification? It has been mentioned before in commentaries that the fund will help us to reduce the age of qualification for the State pension. Will the €5 billion that has been taken out of the fund, as we have heard, be used for PUP payments only, or is it also for other Covid support payments? The witnesses might clarify that.

Mr. Hession mentioned the 26,000 students in receipt of the PUP. I have received queries from a number of students on the taxation implications of the PUP for them. Will there be any such implications for that cohort of people? Obviously, they are trying to get back to their education and to pay for it, other members of the committee have mentioned. I ask the witnesses to comment on that issue.

Finally, the witnesses mentioned in their introduction that over 90% of claims for the PUP were received online. That is a very interesting figure. As public representatives, many people come to us with queries about making applications for social welfare payments online. I know there have been difficulties with making online applications for medical cards, in respect of which I have encountered particular difficulties. Have any lessons been learned with a view to rolling out the online facility to other payments? Like other committee members, I have had queries about the actual application form being much easier to complete. However, I am most interested in the fact that over 90% of claims were submitted online. Is that somewhere that the social welfare and social protection authorities are thinking of going in the future?

Chairman: I thank Senator Wall. Which of the witnesses wishes to respond first?

Ms Teresa Leonard: I will start with the Senator's question about the child dependant payment. He referred to someone who has two child dependants and is receiving just €203. It would probably be better for the person in question to apply for jobseeker's allowance directly and to claim for the children through this allowance. As PUP is a flat-rate benefit, with one rate per individual, there is no rate for dependants. I suggest that the Senator contacts me with the details of that person, and we will send out the proper application forms for jobseeker's allowance. The person in question could possibly claim for the children, and maybe for a spouse or partner. There are other payments to which he or she could be entitled.

The genuinely seeking work rule is there. I am sorry that I caused confusion in my first

answer in respect of how the rule applies to PUP. We are not actually pushing it at this point in time because of the actual climate. We are not forcing people who are temporarily out of work towards the genuinely seeking work rule right now. The committee should recognise that the Department is really stretched in supporting the PUP. We have staff all over the organisation who are backing up that particular scheme, and are working on it along with their other tasks to ensure it is paid promptly every week to all recipients. There is not the facility to implement the genuinely seeking work rule effectively, efficiently or thoroughly at this point, for numerous reasons. First, the climate is such that it may not be appropriate. Second, the resources required to implement it limit how much action we can take on it at this time. Nonetheless, the rule exists. It is similar to a jobseeker's scheme. Just to be clear on that, a jobseeker's scheme has a genuinely seeking work, GSW, requirement to it.

As for the 90% online applications for PUP, PUP has been very successful online. I overlooked a question that the previous Deputy asked about why one had to send an email to get the form. We started out initially with a form for PUP in mid-March of this year - at this point, it seems like last year - and within three weeks we had an online application process in place. The take-up of that was substantial from day one to the point that in the resurgence in the past number of weeks, we primarily took away the paper application and encouraged people to go online. The paper application was available but the percentage of people who used it, as the committee can see, is very low.

We are working in the Department on putting all our schemes online. It takes a bit of time to get through them all because we have over 80 schemes in the organisation but this year we have made considerable progress in our presence online and the availability to our customers of online services. We will continue with that. It is part of our objective.

Chairman: I thank Ms Leonard. Has Mr. Hession anything further to add?

Mr. Rónán Hession: I will go through a couple of the questions that were raised by Senator Wall. I thank the Senator for his kind remarks about the work of the Department, and also Deputy Ó Cuív, who made kind remarks.

On the task force on arts and culture, Senator Wall asked if the figure was surprisingly low given the size of the sector. There has been work done by the Arts Council. They had a report done by EY which pointed to a higher incidence in terms of the effect. There is probably a number of factors at play. First of all, the €55,000 includes sport and recreation. They are categorised together in terms of nomenclature of economic activities, NACE, codes. Second, approximately half of the arts and culture sector are part time. Some people are part-time workers and they will have either other work or other responsibilities. Musicians, for example, typically will have sources of income other than performance or recording, most obviously teaching. They will teach guitar or piano. There may be some people whose arts income is not the majority share of their income in terms of what they earn from year to year even though they would consider it their primary role. In those cases, it is perhaps that they are classified under education. It means a bit of a deeper dive there. The task force was only in place for six weeks and there was not really an opportunity to dig into the deep statistical context for that. However, that is one possible explanation.

The Senator asked about the State pension. In the budget, the full-year cost of retaining the current pension is €453 million and the cost for next year is €221 million. Clearly, that is significant expenditure which will impact on the Social Insurance Fund, SIF.

The Senator asked about students and their tax status. It is not a matter for our Department. We do not have a deciding influence in terms of the tax treatment of the PUP payment. The issue was raised in the context of the Finance Bill and the amendments that were made to the Finance Act 2018 about the tax treatment and the Revenue Commissioners. That will apply, I would expect, to students in the same way that it will apply to other PUP recipients.

Between the two of us, I hope we have covered the questions. Obviously, we would be happy to take more.

Senator Róisín Garvey: It is amazing what people can do when they are under pressure. I compliment the Department of Social Protection on the number of people who were given some kind of respite in the pandemic because it was quite a shocking occurrence. The pandemic hit us overnight. Nobody saw it coming at the level it did. The Department did amazing work and kept many people sane and above water. I thank the Department for all its efforts.

With regards to the student payments, it has been amazing for the students who usually have part-time work to be able to get the PUP. That made a phenomenal difference to them. It was really important for them to be independent of their parents. Maybe they were independent of their parents anyway but they stood on their own two feet and they have worked. It was amazing the Department did that. I was curious about whether they will be eligible for the Christmas bonus because they will be dying to know that.

The second question I wanted to ask was about the arts and culture. I would like clarity around the €480. Is it that they can earn up to €480 sporadically and still be eligible for the PUP?

Another issue that came to my notice from different people in my county who would have worked in different sectors, especially in the tourism sector, who were over 66 and who have always worked is that they were not eligible for the PUP payment. That is shocking because those people have been working probably 50 years. I felt so bad when they were approaching me saying that they have worked all their life and now they have nothing and the Department will not give them anything just because they are a bit older. I would like to hear a response to that. That is something we must look at in the long term. How we treat our older people in this country needs to be looked at, especially with regards to the Department of Social Protection.

Seasonal staff missed out on the PUP. In my county, we have a considerable tourism industry and there were people who missed out only by a matter of days. As the part-time employment contracts that they have had for 30 or 40 years in the Cliffs of Moher or wherever did not start this year, they missed out by a couple of days. They were not eligible. I do not know whether that has been rectified or what the Department has done about that. There is a significant number of people employed in the tourism industry and it would be seasonal work.

Deputy Ó Cuív mentioned mortgages. This is probably not for this Department. The €350 will keep people above water but, as the Deputy said, for those with big mortgages, often half people's wages are going on their mortgage, sadly. It is disgraceful. I was wondering if there is any mortgage relief. Is that a matter for the Department of Housing, Local Government and Heritage or where does one find information about that?

On the PUP tax, if people have to pay it back, whether they are students or otherwise, if Ms Leonard and Mr. Hession are saying it is not a matter for their Department, which Department do I go to find out that?

Overall, I thank the Department. It has done brilliantly.

Chairman: Mr. Hession seems to be eager to answer some of the questions there.

Mr. Rónán Hession: We are just trying to be fair to each other in letting us gather our notes so that we can answer the Senator's questions.

I thank Senator Garvey for her kind words. They are very much appreciated.

The Senator asked whether students would get the Christmas bonus. As Ms Leonard has outlined, the qualifying conditions are not based on whether one is a student or not. It is about whether one has the 17 weeks combined and whether one is on PUP for the relevant weeks. If they meet those conditions they will get it. The fact that they are students is not a complicating factor.

The €480 applies to any self-employed person. It is not limited to the arts sector. It effectively works over a rolling four-week period. We look back over the past four weeks to see if a person has stayed under the €480 limit. The language around the sporadic nature was, if you like, a formulation to describe a rule that ultimately has been replaced by a strict €480 rule. Therefore, if one earned €480 or less over the past four weeks, one is all right.

On the 66-year-olds, we recognise this is an issue that has been of concern to Senators and Deputies. It has been raised throughout this process. The PUP is intended as a working-age scheme and it has those limits. Apologies, as I did not come back to Senator Wall on the 17-year-old issue. The age range that applies for working-age payments is 18 up until pension age. If one is above 66 and receiving the State pension, one can keep all one's employment income. It is just that slightly different rules apply when people go past 66. They get other payments that are there to support them and the two-person rate for a person on the State pension is a good bit above the payment rate of a two-person jobseeker payment. That is not to diminish the concern. We understand that but PUP is a working-age payment and the age range that applies reflects that.

On the seasonal worker issue, when PUP was first introduced that came up as an issue. PUP applies to people who were in work on 13 March or thereabouts and who lost that employment suddenly because of the pandemic. It was not really designed to deal with a situation for people who were not in work at that time but typically had a pattern of seasonal employment. They may have worked during the summer, for example, in the tourist period. There are other jobseeker supports that are available for those people. I expect that people in that seasonal position, who might have gone back during the summer and now find themselves out of work, would be eligible for PUP. That issue has somewhat timed out.

We formerly had a mortgage interest supplement but it was discontinued in 2014 or thereabouts. It is not a support we provide as a Department. Deputy Ó Cuív raised this earlier. There have been a number of measures and I know that the Minister for Housing, Local Government and Heritage has been keen to ensure there were statutory protections for people and engagement from financial institutions to try to ensure that the pandemic would not create unnecessary difficulty for people.

On the Senator's question about which Department is the lead on the taxation of the PUP, it is a matter for the Department of Finance in policy terms and the Revenue Commissioners.

I might ask my colleague, Teresa Leonard, whether there is anything I have missed or that she would like to add.

Ms Teresa Leonard: My colleague has covered all the questions very well. I will add that quite a number of job supports are available to people, so if people miss out on different things, there are a range of job support initiatives for people both on PUP and on jobseeker's allowance. I will not go into them now but if the Senator wants to know about them, a list is available.

Senator Eugene Murphy: Like the Chairman and other members, I thank the Department for the wonderful work it has done over recent months. On a personal basis, having dealt with the staff through my office, I can pay them only the highest compliments. Certainly, nothing has been complicated and every effort has been made to help people in our constituencies. Like other members, I really appreciate that. Many of the questions I had intended to ask have been asked by the Chairman, Deputies Ó Cuív and Kerrane and others.

Our guests might clarify how many people have to be paid arrears. They said the issue should be sorted out in the next couple of weeks but how many people are there? I understand that the Department might have more investigating to do. As Christmas approaches, if there are people on the longer term list who really want the money, can we do anything for them or make a case for them? The investigations might not be fully carried out, but close to Christmas, people need that money more than at any other time of the year.

I join the Chairman and others in their remarks about the entertainment business, a business I know a little about. I greatly appreciate the effort the Department has made in that regard but people in the industry have concerns about taxation. While I accept what Mr. Hession said about it not being an issue for their Department and it being an issue for the Department of Finance and Revenue, they might make a note of it. The continuation of PUP will be very important for these people. I think we all accept that with regard to the recovery, vaccinations and so on, the entertainment industry will be at the end of line in terms of getting back into business. Many of them face very serious financial challenges. It is not only about putting bread on the table. Engineers in that business who travel throughout the country when working at gigs have to have vehicles that are up to speed and roadworthy. All of them are paying substantial fees on such vehicles. They have hidden costs that people do not see. I am very concerned about that.

It was welcome to hear what our guests said about the Christmas bonus, but will they clarify how much they estimate it to cost in total?

Ms Teresa Leonard: I thank the Senator for his questions. I cannot tell the Senator the exact number of people who are eligible for an arrears payment but the figure is somewhere between 250,000 and 300,000. He asked about people whose payments are being kept aside. In the case of most of the ones we cannot pay, they lack information, that is, the information available to us does not allow us to consider whether they are entitled to a payment. There is a small number we will do manually because of particular circumstances, and we will act on them as quickly as we can to get them paid. I appreciate that Christmas is coming, and our intention is that the vast majority will be paid on Tuesday next.

I might pass to Rónán Hession while I locate the figure for the cost of the Christmas bonus.

Mr. Rónán Hession: I appreciate the Senator's remarks about the work of the Department. He mentioned the costs faced by people in the arts and culture sector. One measure that has been introduced during the pandemic period is an enterprise support grant of €1,000. If somebody is coming off the PUP and works in the entertainment sector, perhaps as a self-employed musician, and if that person needs assistance with costs to get business going again, there is a once-off grant of €1,000, which covers vehicle expenses. That may be of interest to those the Senator has spoken to, and I am certainly happy to send him on the details of that. We provided for about €12 million for the grant for this year and the recent budget extended that into next year. Thus far, about 7,000 people have applied, at a cost of about €6.5 million. People are using it and it is helping those in a self-employed position, including in the arts and culture sector, to get back to work and recover some of those costs.

Deputy Claire Kerrane: Returning to the online application form, I appreciate that our guests said there was a very low take-up, which is fine. I have found, however, as I am sure many Deputies and Senators have, that people have contacted us wanting to apply for the PUP but could not do so online, whether because of a lack of broadband or because they just could not do it, which is fair enough. We would print the document and send it to them. While there may be a very low take-up, I do not understand why the form is no longer available to print for people who might need to use it. I do not see it as an issue and it should be available online for people if they need the paper application as opposed to having to email.

On the issue of people genuinely seeking work, our guests mentioned the job activation schemes and how the Department might consider that in the new year. Is there a specific plan? I do not see the Department will work out, where sectors have been closed or have not fully opened, who is genuinely seeking work and who should be moved on to activation. We

will need to be really careful about how we consider that in the new year if it is not being pushed as much now. I do not see the rationale for it to be there at all.

On the take-up of courses and returning to education, there should be full flexibility for all courses. As an example, I was contacted by someone on a jobseeker's payment. This person has completed 147 of the 156 days of the qualifying period needed for those on a jobseeker's payment to qualify for a vocational training and opportunities scheme, VTOS, and they cannot go on it because they have not satisfied the qualifying period. Someone else contacted me who wanted to do a bus-driving course at an education and training board but cannot do because that person is on the PUP. I would like to see absolute flexibility for people who want to go back to education. It should be made as easy as possible. There are anomalies where people are encountering roadblocks. I ask that social welfare officers would allow full flexibility when assisting people in coming off jobseeker's allowance or the PUP.

Chairman: Before I call Senator Garvey, I wholeheartedly endorse the comments of Deputy Kerrane about access to the application forms online. All our offices use them for people who cannot apply online. Sadly, they cannot come in to us at the moment, so the only way we have to facilitate them in applying for schemes is by printing those forms, and I have printed many. I ask that the facility be reinstated on the website.

Senator Róisín Garvey: I concur completely. We should be able to do post them out to people who cannot get into us. Not everybody has a printer and not everybody can do things online. At least we can do that much for them.

It is great that people who get seasonal work over Christmas will not have to worry about availing of the PUP up to the end of March. Does the Department envisage that the PUP will continue for a long time? What are the hopes in this regard in the context of improvements in the tourism and other sectors? Is it undecided?

Deputy Éamon Ó Cuív: I concur with my colleagues regarding online forms. We are all slower when filling out a strange form and we often wonder what information the questions are actually seeking. I have seen this with people with PhDs and so on. If a person has filled out a form 50 or 100 times, he or she knows the information the questions are asking for. Many Deputies and Senators print off a form and start filling it out by going through the questions in such a way that the person for whom the form is being filled will know what is being put on it, or they start filling it out for their constituents on verbal basis. I often do this in my constituency clinics. When a form is filled, we send it to the constituent, who signs it and submits it. The Department gets a better filled form but a Deputy or Senator cannot submit it online for their constituents because he or she cannot authorise it. I often fill out various forms, such as pensions forms, manually for people. Since we fill out forms so often, I would hope that we fill them out to a good standard.

One thing I could not understand is that I encountered somebody in the entertainment business who did not have much formal education and who wanted to do a one-year course. I could have understood the Department's response if it had been a three-year or four-year course because we hope the pandemic will not go on that long, but in this case it became a choice between getting a basic payment of €203 or forgetting about that and going on the course. The individual could not afford to do the course without the payment. It seemed to me a pity that if somebody was forced to be at home, he or she could not do a course of up to one year in duration. I am not making the case for degrees, etc., because they last for three or four years and the pandemic is not expected to last that long. We do know, however, that in the entertainment

business, even if everything is resolved, it will be a slow burn before everything gets back to normal because the one place people will still be reluctant to go will be into a crowd, even if there are vaccines and cures. I expect restaurants will open up faster than crowded entertainment venues, particularly indoor venues. I realise it is a policy issue and that there is a policy formulation. I would be interested in hearing about this.

I still want to discuss the mortgage interest supplement. We were told the Department of Finance made arrangements with the banks but it was only pushing the can down the road because the mortgages still have to be fully paid. Would it be possible to go back to the Department and ask whether it could send this committee the rationale, in 2014, for getting rid of two complementary schemes, namely, the rent supplement scheme, which supported the unemployed in paying rent, and the mortgage interest supplement scheme, which traditionally, or for as long as I could remember, helped those with a mortgage who became unemployed? Perhaps the Department would send us the rationale for why there was a suspension in 2014. I have dealt with welfare for many years but I could never understand the decision. It was the strangest decision when it was made because, let us be honest, the crisis from 2008 onwards was largely about mortgages. I have always believed we would have saved a lot of hardship if the scheme had been continued or had been beefed up.

The famous four-year plan we developed at the end of 2010 strengthened the mortgage interest supplement. There was not an awful lot in it on this but there was a sentence that referred to strengthening the supplement because it was seen as the best safety net for those with a mortgage. Something similar has happened now, but in a different way. The mortgage interest supplement, which used to last for as long as a person was unemployed and ended the minute he or she went back to work, meant that person had no accumulated interest and would not be going cap in hand to the financial institutions, which are not charities. I just do not understand the rationale for the suspension. Maybe somebody in the Department could give us the policy reason for it.

Senator Mark Wall: Mr. Hession mentioned the 17-year-olds. Could he comment on the issue? I have raised it before. Are there figures concerning those who have paid taxes but who are not entitled to the PUP? Where does Mr. Hession see the affected people going? This is raised with me fairly regularly.

Chairman: On Deputy Ó Cuív's point, it would be very useful if Mr. Hession could give us the rationale for the abolition of the mortgage interest supplement. This is something that the committee will be coming back to in the next week as part of its recommendations, so it would be of assistance to us.

Mr. Rónán Hession: On that point, we would certainly be happy to prepare a note on that and provide the context. The rent supplement system is still operating. That should be clarified if it was not clear earlier. Based on my recollection of the context for the removal of the mortgage interest supplement, there were a range of reforms at the time. We will certainly prepare a note. Do not hold me to this but my recollection is that it was a decision that came out of the Keane report produced by the Department of Finance at the time which looked at a wide range of issues. I will certainly be happy to provide a note on that.

I will make one point on education and then ask my colleague, Teresa Leonard, to come in on some of the operational matters. Generally speaking, we have been trying to support people going back to education as best we can. In the July stimulus package, we waived the waiting period for people on PUP so they could get the back-to-education allowance. It is done via the jobseeker's scheme because, as things stand, and Senator Garvey asked about

the future of PUP, it is supposed to conclude at the end of March. It will be open until then, but the current timeline for PUP is the end of March. Therefore, we cannot put people onto longer schemes or education courses where the payment will not be available after March. At the same time, as part of the July stimulus, we have said that a person on PUP will not have to wait for the normal period and can go straight into the courses. If a course is short term, the individual can stay on PUP. If it is for a longer term, the individual will need to switch to a jobseeker's payment. I might ask Ms Leonard to come in on the other issues.

Ms Teresa Leonard: I have not thanked all the Deputies and Senators for their kind words about the operational staff and staff who have worked across the Department. Those words are much appreciated because the staff have worked really hard on this scheme.

With regard to the application form, members will know that 90% of people apply online and are comfortable doing so. We have a very good process in place to supply application forms. There is an email address and when we are emailed we send out an application form very quickly. It is in the applicant's interest to apply online because we pay the week somebody applies. If one applies online on a Monday, one will get a payment the following Tuesday. The PUP week runs from Friday to Thursday. We have the payment available the following week unless there is something seriously wrong with the application. The online service forces people to put in the correct information and fill out the appropriate boxes. Therefore, we do not have to go back to people for further information. There is a lower likelihood of getting it wrong. In the beginning, quite a number of applications were filled out very incorrectly by individuals and the only option available to them was to apply again, which delayed them somewhat. We are very anxious to pay people as quickly as possible but we have a very good process in place such that there is absolutely no difficulty in getting a form. We provide it very quickly. I have two teams that work on it immediately. The applications are processed on receipt so there is no delay. That should be borne in mind. We will consider putting the facility on our website. It is a fact that the quality of what people fill out and the actual response that we give them is better, as a consequence of them applying online. It is in the interest of customers that we have that as much as anything else.

In terms of activation, and I say this having heard from some of my colleagues, in the first instance it possibly would be to send out information to people in receipt of the PUP on how to start the process and to know what might be available to them. My colleague, Mr. Hession, has mentioned job supports, the different job incentive schemes, back-to-education scheme, back-to-work scheme, enterprise allowances, enterprise grants and training support grants. There is quite a range of stuff that would be of interest to some of the people on PUP and that might work in their interest. That is the starting point for pushing activation. It would be very useful for people to get the information initially. Mr. Hession has answered the question about a one-year course so that covers all of the questions.

Deputy Éamon Ó Cuív: It is not so simple to transfer from PUP to a back-to-education allowance because PUP is effectively a benefit payment so it is not means tested but the back-to-education allowance is. I ran into trouble with a query because the person's spouse had an income. so the applicant was not entitled to an assistance payment. The applicant was just €5 or €10 over so would have got a very small assistance payment in any event. The back-to-education allowance is an allowance. It is not a payment without a means test and that is where the claim one can transfer comes asunder. Anyone in receipt of PUP should be allowed to do a one-year course as it would be an opportunity for people to better themselves without a cost to the State.

Senator Mark Wall: I know 17-year-olds cannot vote at the moment but can the

Department comment on the failure or inability of 17-year-olds to qualify for the PUP payment? I ask because the issue has been raised with me on a number of occasions.

Senator Róisín Garvey: Every member here who deals with people on the ground has requested that the application form be put back on the website. I completely hear what the officials have said. It is fantastic people are doing so well applying online but there are people who cannot do things online and do not have access to broadband. Everybody here has clearly requested that the application is put back online. I am sure that many people will still apply online but some people are old-fashioned and need a good hard copy.

Deputy Claire Kerrane: I support what Senator Garvey has said. I appreciate that it might be in people's interest to apply online but I still do not understand why the form cannot be made available. Not everyone can send an email seeking the form and as some people cannot even work a computer, a hard copy should be an option.

In the case of those who had been in receipt of the PUP previously and who had received it for 17 weeks from March onwards but who are not in receipt of the payment at present, do they qualify for the Christmas bonus?

Mr. Rónán Hession: I apologise to Senator Wall that he had to ask me his question a third time and that is why I am keen to comment. The PUP is a statutory scheme so it is limited. Unfortunately, people aged 17, notwithstanding that they were working and paying taxes, will not qualify for PUP. We have a supplementary welfare allowance available if there is an urgent financial need or if people are in financial difficulty. I encourage anyone in that position and who is in difficulty to contact our community welfare service.

I will ask Ms Leonard to speak to the points about online forms and the Christmas bonus. I understand the point Deputy Ó Cuív has made about the duration of courses and we note that.

Ms Teresa Leonard: The answer to the question about the Christmas bonus is "No". If somebody has 17 weeks but on the week of the bonus he or she is not in payment then he or she will not get a Christmas bonus, which is the same for every other scheme. The bonus is only paid to people in receipt of the scheme on the bonus week, as defined. Very simply, if one receives a payment on that particular week, then one gets the bonus. It is very similar to the carer's support grant, which is paid in June. If one receives the payment on a particularly Thursday in June then one qualifies for the carer's support grant. It works based upon one week. So people have to be on that week irrespective of whether they had it in the past.

All I can say is I will consider putting the form back on the website.

Chairman: I hear what Ms Leonard said about the form. These forms are very useful to Members of the Oireachtas. Even as an interim measure, until we consider the broader issue, perhaps all Department of Social Protection forms could be made available in electronic form in order that they could be put up on the Plinth service, which is our intranet here. The initiative would ensure that for anyone who contacts the office of a Deputy or Senator, we could print off the form and assist people to fill them out.

I will start by asking Mr. Hession about a cohort of people over the age of 66 who do not have PRSI contributions, are ineligible for a State contributory pension, will not receive a non-contributory pension because it is means tested and some of whom continue to work servicing loans on their businesses. It is the policy of the Department and the advice from officials to Ministers over the years to increase the age threshold for receipt of the State contributory

pension, yet a cohort of people who are over the age of 66, continue to work and are not in receipt of a State pension have been denied any support throughout the pandemic. They are ineligible for the pandemic unemployment payment. They are not in receipt of another social welfare payment. They are ineligible for another social welfare payment. That cohort must be shown some flexibility when it comes to the pandemic unemployment payment.

In terms of the music industry, Mr. Hession made the point that the €480 threshold is a rolling threshold over a previous four-week period. This issue needs to be reconsidered. I ask that there is an average applied to the payment of the pandemic unemployment payment rather than using a four-week period because if some entertainers or artists are commissioned to do work and offered €500 they must, unfortunately, automatically refuse. Also, they may get payment in two separate calendar months but happen to be within the four-week period so yet again they are discriminated. The most sensible approach to take is for the €480 average to span the period of their pandemic unemployment payment. The adoption of this approach would be a far better vehicle to help these people return to full-time employment, which is the primary objective.

I accept what Ms Leonard said about arrears, that it is a complex calculation and that the Department intends to pay the vast majority of people next week, which is welcome. She said that the Department is going to deal with the other people who must be processed manually over the coming weeks. The intention is to have those paid by the end of the year. First, what sort of numbers are we talking about that will be processed manually? Second, the witnesses need to be conscious of the fact that if those people are not paid before the end of the calendar year they could end up being taxed inappropriately in 2021 on those arrears because that income comes in in 2021 even though it is to supplement their income for 2020. They may have a tax credit available to them in 2020 that, hopefully, may not be available to them in 2021 if they get back into full-time employment. Every effort must be made to ensure that all of those people are paid this year. I would actively encourage the witnesses to make contact with the Department of Finance to ensure that those people are not discriminated against in respect of the taxation code in 2021 because of that delay in paying their arrears.

I want to make two other points. The first is to pick up on Deputy Ó Cuív's point about the mortgage interest supplement. I know this is not for the witnesses to comment on but I was very surprised that the Tánaiste suggested yesterday that there would be a further lockdown in the new year. I believe he is throwing in the towel in respect of what we need to do to manage this pandemic. We need to make every possible effort to ensure that there are no further lockdowns in this State in 2021. In that context, and in light of his particular comments, does it not make sense considering that the payment guarantee that had been in place with the banks is no longer in place that we would reintroduce mortgage interest supplement, particularly for people in receipt of the pandemic unemployment payment? That would make a significant difference to people, particularly to the more than half of those in receipt of the pandemic unemployment payment who have seen a dramatic fall-off in their basic income.

In her evidence Ms Leonard made the point that the temporary wage subsidy scheme did not correlate with the pandemic unemployment payment whereas the employment wage subsidy scheme did. She might elaborate on that. We are quite happy to take that in written format after the meeting but I want to flesh out those complexities because they are the very issues we want to see addressed as part of this process in which we are currently involved. I do not know who wants to start. Ms Leonard is on the screen so I might ask her to start off.

Ms Teresa Leonard: I thank the Chairman. To deal with arrears first, the numbers that may

have to be manually done are quite small. We will do our best to get the process going as quickly as possible but they are extremely complex. I have to make that point because I do not believe people understand the complexity of going back over the number of payments we have made to pick weeks for which people may not have been paid and that they will be paid something else for the same period. A proportion of people have not provided us with the information that will allow us to quantify whether they have arrears. That is one of the issues but there is a small number that we will deal with manually, and we will do our best to deal with them.

As regards the tax liability of that, I take on board the Chairman's awareness of that and what he said in respect of it.

Chairman: In terms of small numbers, are we talking about tens, hundreds or a few thousand people? What is Ms Leonard's definition of a small number?

Ms Teresa Leonard: It is a few thousand people.

On the temporary wage subsidy scheme and the employment wage subsidy scheme, as the Chairman is aware, the temporary wage subsidy scheme was a supplement provided to employers for each individual employee to supplement them as a part of their wages so it was paid directly to the employee. The employer could top that up with income to bring it up to a particular level. That was part of the temporary wage scheme. It was paid through an employer for an individual employee and it was attributed to an individual employee. It was put in place to ensure that employers kept their employees attached to the workplace. It was to supplement them with paying wages to keep them attached to the workplace. That was the primary objective of that particular scheme. As such, they are in employment when they are on it and they are not entitled to the pandemic unemployment payment, PUP, when they are in employment. The PUP, by its very definition, is for people who have lost employment due to the pandemic because their work has closed or whatever reason. It is because they have lost work because of Covid-19.

On the employment wage subsidy scheme, I either misspoke or I misrepresented what I said. It is an actual supplement to the employer to supplement wages for his or her employees but it is not defined directly to individual employees and, as such, it is not attributed in that manner. It is claimed by the employer for, say, ten employees who fulfil a certain criteria. They get the supplement towards the payment for those ten employees but it is not individually placed on them. It is not compatible with the PUP because the individual is in employment. The PUP is only paid when someone is out of work, when people have been let go because of the pandemic and their employment has been limited as a result of that. It is in regard to jobseeker's that there is compatibility between getting the employment wage subsidy scheme and jobseeker's unemployment benefit. That is in respect of the Aer Lingus workers where their employer may be claiming the employment wage subsidy but they can claim part-time or casual employment with us at the same time. To be clear, the temporary wage subsidy scheme is not compatible with the PUP, neither is the new employment scheme from 1 September, but it is compatible with jobseeker's and they can be paid to someone who has periods of unemployment along with that particular scheme.

Chairman: I thank Ms Leonard and call Mr. Hession.

Mr. Rónán Hession: I thank the Chairman. Coming to his first point about people who are aged 66 and over and the PUP, the PUP is a statutory scheme and the Oireachtas has put those age limits on it so we do not have discretion as a Department to offer flexibility on that. On the substance of the point, however, if a person does not qualify for a contributory pension

because of their contribution record and then they do not qualify for the non-contributory pension because of the means test, that is the core feature of our system. Someone is either getting a contribution based payment or a means tested payment and if they do not pass the means test it is because of their income. I accept the point the Chairman made that people will have outgoings and demands but in terms of the way social welfare payments are assessed, it is very important that they are either contribution or means test based. As a fallback we have the supplementary welfare allowance, which I know people have spoken of negatively as something they do not believe they should have to resort to, but it is a safety net for people to make sure that where people are under financial pressure and have difficulty they can apply for that but that, too, is subject to a means test.

On the point about the person in the music industry who might be offered €500 for work, the €480 limit is what one can earn and still get the PUP. If somebody has a job that is worth €500 they should be back in employment for that week. Strictly speaking, if we look at the legislation, if one is self-employed and on the PUP one should be available for full-time work. Somebody doing work worth €500 is unlikely to satisfy that so the best thing for that person to do would be to sign off the PUP for that week. The averaging will apply over the duration of the period on the PUP. We are trying to be flexible but at the same time if somebody is consistently earning above the €480 limit they may look at the part-time job incentive, which allows them to work 24 hours and keep a payment of €128.

I am mindful that when we are talking about these thresholds that they exist across social welfare schemes. For example, the disability allowance is €120, increasing to €140 next year. Jobseeker claims are roughly €20 day. It is consistent with the overall approach taken. For somebody who has a pattern of having work every now and again, the best option for him or her is to sign off when he or she is working and to go on to the PUP when he or she is not working, as opposed to trying to squeeze the €500 under the €480 limit.

I acknowledge the point that is being made. You are raising a wider point, Chairman, about the pressure people who have mortgages will be under as they go through this, and there were comments about the possibility that mortgage interest supplement could play a role there. All I will say is that if we hit a point we will come back with a note. It is not something that has featured in our thinking. To some extent, a significant portion of the pandemic problem has fallen to our Department and our focus has primarily been on the income support, as opposed to the wider suite of housing measures that has been handled more widely across the Government. We hear the point and we will produce whatever information we can to help the committee form its own deliberations and to implement its report. I hope that has answered your questions, Chairman.

Chairman: I thank Mr. Hession and Ms Leonard for their assistance to the committee. I understand exactly where Mr. Hession is coming from with his comment regarding pensioners. I have teased this out at length with the Minister and her predecessor. It is difficult to tell older people to go for a supplementary welfare allowance when some of them will still recall the community welfare officer as the relieving officer. He can imagine that unless they are in a desperate situation those people will not make contact with the community welfare officer under any circumstances. That is a cultural mindset that exists and the Department needs to be conscious of that in regard to that cohort. I will leave that with the witnesses.

I thank both witnesses for their very comprehensive contribution this morning, their agreement to come back with further information and their assistance in providing the briefing material to the committee. It has been very useful to the committee members and will help us in our continued deliberations on the pandemic unemployment payment scheme.

I thank both witnesses for their time today. The joint committee will adjourn until Monday, 30 November at 10 a.m. when the committee will meet in private session on the Microsoft Teams platform.

The joint committee went into private session at 10.53 a.m. and adjourned at 11 a.m. until 10 a.m. on Wednesday, 2 November 2020.

Appendix 2 Submissions received

From: Pádraig MacLochlainn
Sent: Monday 9 November 2020 09:46
To: 'sprci@oireachtas.ie' <sprci@oireachtas.ie>
Subject: Submission on the PUP scheme

A chairde,

Thank you for the opportunity to make a submission. Here are some issues/ problems with the scheme as identified by my SA in my constituency office.

- Being told not eligible as no record of PRSI Contributions (contributions paid)
- Assessed at the incorrect rate (to low) and severe delays in responding to requests for information from Social Welfare.
- Not responding to clients after they send in requested information when an appeal is submitted
- Clients feel that their claims for reassessment are not being looked at as email from PUP comes out same day as submission of additional information by client with exactly the same details as to why they either don't qualify at all or don't qualify for higher rate.
- Time scale of assessing claim (I have one person waiting 5 weeks)
- Not back dated to when claim was submitted (I have one person who got payment for one week after applying 5 weeks previous , she owes family and friends money that they loaned her to cover the time she had no income at all. She is owed one week from previous claim for PUP from the first lockdown also she expected a payment of €2,100 but only received €350. This women is at her wits end.
- No direct line for us to query issues.

Thanks, Pádraig
Pádraig Mac Lochlainn TD
Leinster House, Kildare Street, Dublin 1
01 6184061
13 The Meadows, Buncrana, Co. Donegal
087 2771958
Constituency Office
Sands/ Fullerton House, High Road, Letterkenny, Co. Donegal
07496 01730

Written Submission to the Joint Committee on Social Protection, Community and Rural Development and the Islands Review of the Pandemic Unemployment Payment Scheme

From Senator Róisín Garvey 16/11/2020

Unfairnesses that have been highlighted to me include:

- PUP being unavailable to people who were over 66 and working
- Seasonal Staff who were due to start working during the time of the pandemic lockdown, whose annual income depended on that regular seasonal work, but could not get PUP, even though some of them were within a few days of starting their work.
- Some people would be better off on PUP than on the wage subsidy scheme, particularly when

Submission to the Joint Committee for DEASP with Particular from the Music Entertainment Association of Ireland Consideration to the pandemic Unemployment Payment.

In order to best illustrate the major issues faced by our members and the wider music & entertainment sector, it is necessary to present information in the context of our pre-Budget Submission and PUP.

Background

In our pre-Budget Submission MEAI called for the reinstatement of PUP at €350 per week. To put this in perspective - the average weekly household spend according to figures from the CSO in 2015/2016 was €845.12.

If we take into consideration the essential costs, they are:

Food €123	Food €123
Transport €124	Transport €124
Housing €164	Housing €164
Mobile €20	Mobile €20

This is an average weekly household expenditure of €572. With Payment Breaks in place, we can remove the cost of Housing of €164, and this leaves an average weekly expenditure of €408. Even with the PUP at €350 per week, people were just struggling to get by. The failure to guarantee Payment Breaks, and the reduction in PUP (to €250 a week in 50% of recipients), has guaranteed to plunge our members into further debt, expose them to a greater risk of losing their home, and add substantially to the unbelievable financial stress which they are experiencing.

Government Budget Response to PUP Proposal

Reinstatement of PUP at €350 per week was not delivered. PUP recipients can earn up to €480 per month. On August 4th 2020, Minister Heather Humphreys informed MEAI that musicians and entertainers could engage in sporadic work. In the subsequent weeks the Minister clarified this further without putting a numeric figure on it. The nature of the Music Industry is sporadic in general. MEAI informed the Minister and the Department, that due to the absence of any regulation in the Music Industry, there existed varied pricing structures within the industry.

One musician might get €100 for a gig, another might get €500 for a gig. We asked would sporadic work be based on frequency or remuneration of work. By placing a cap on earnings, it has effectively regulated the price of a gig in Ireland without consultation. This allows potential for musicians to be exploited by anyone employing their services as they know there is a limit to what they can earn before losing the PUP. It has placed musicians over a barrel.

All of the above has to be taken in the context of the following: The majority of gigs that happen in Ireland take place in bars, pubs, lounges, hotel bars and are non ticketed. The owner of a premises engages a musician to provide entertainment to attract a crowd to the venue. These gigs are usually free admission. Since the 12th March this industry has been in lockdown. These workers do not have the opportunity to engage in work. Even at level 1, the guidelines for bars and pubs means that music must be at a volume level that doesn't encourage customers to raise their voices or lean in to chat to each other.

As long as the Government implements the 5 level system, musicians and entertainers who make their living in bars, pubs, weddings, hotels have had almost every opportunity to generate income taken away from them. In March, the PUP was €350 per week, payment breaks were handed out, there was a level of security. July 17th the first cut to PUP was introduced. September 17th PUP is reduced for everyone. September 30th Payment Breaks cease.

Current Issues

The major issues with the existing PUP scheme are:

Efficiency

(a) Current waiting time for applying for and receiving a rerate can be up to 10 weeks. We are seeing people applying for rerates and in worst case scenarios having to wait up to 10 weeks. During the summer many cases were dealt within a 3- 6 week period but as the PUP continues the waiting times are increasing.

(b) Signing off PUP when work becomes available and then attempting to sign back on also can take up to several weeks.

The Minister for DEASP created a dedicated email address for artists in August at the request of MEAI. This was truly a welcome measure and promised to speed up enquiries for the industry. In practise, as the volume of rerate requests and recipients of PUP increased, the response rate of the dedicated email address decreased.

MEAI fully understands the cause of this decrease, but we feel that extra manpower could have and should have been given to the dedicated email address as this industry is one of the worst affected casualties of the Covid-19 Pandemic and guidelines.

If the system was streamlined then many of the issues raised below would not be as urgent or worrying.

€480 per month

The Music industry by its very nature is sporadic and precarious. Musicians tend to 'make hay while the sun shines' in busier periods of the year e.g. March (St. Patrick's Day), the Summer season, and Christmas season. The nature of the industry does not deliver regular work, if it did, the €480 per month would be very beneficial and welcome for performers. If earnings could be accumulated over a longer time period e.g. an 8 week rolling period, this would be advantageous for the months of December/ January or March/April.

Taxation of the PUP

We have been advised by accountants that taxation of PUP could be as high as 40% for individuals depending if they are Income tax assessments are based on calendar year or tax year. If the first €203 per week of PUP was not considered for tax purposes then this would be hugely beneficial to our members.

The Arts Council projected that the Industry would not see a return to 2019 (pre-Covid levels) until 2025. As we reopen the industry in 2021, it is vital that workers have the necessary and meaningful financial supports from Government in order to slowly build up their business during the year. Correct support structures along with better measures for learning to live with Covid-19 and potential Vaccines, will ensure a more accelerated return to pre-Covid levels in the industry before the projected 2025 date. Failure to implement proper supports will realise a diminished workforce which could take years to rebuild possibly beyond 2025.

Irish Congress of Trade Unions Submission to the Committee on Social Protection – Pandemic Unemployment Payment (PUP) Scheme

Introduction:

1. The Covid-19 pandemic is the biggest economic shock in the history of the State causing unparalleled disruption to our economy and labour market.
2. Firstly, we wish to acknowledge the extraordinary work done by DEASP officials and staff on the design and delivery of income supports to up to half of the labour force.
3. As the umbrella body for 44 unions collectively representing the interests of some 700,000 workers in all sectors of the economy, the Irish Congress of Trade Unions (Congress) has at all times contributed constructively to the operation and administration of the emergency income supports needed to control the spread of the virus and to offset the financial consequences for workers and businesses.
4. For example, when the first case of coronavirus was confirmed it was immediately evident to Congress that large numbers of workers would not be in a financial position to follow public health advice to self-isolate if infected or a close contact, given the lack of statutory sick pay. Following representations to the Taoiseach, the Government introduced the Covid-19 Enhanced Illness Benefit and waived the waiting days. To date, almost 85,000 workers have availed of this payment.
5. Equally, Congress was first in calling for a wage subsidy. The Temporary Wage Subsidy Scheme and later the Employment Wage Subsidy Scheme have been instrumental in saving jobs and protecting incomes and hence consumer demand, helping struggling businesses to survive the crisis and maintaining the link between workers and their employer.
6. We continue to be to the fore in identifying anomalies and finding solutions in the administration of the Pandemic Unemployment Payment and the Temporary Wage Subsidy Scheme, such as highlighting and remedying the exclusion of new mothers returning from maternity leave from wage supports.
7. In the remaining sections we focus on a limited number of priorities for Congress for the Pandemic Unemployment Payment, as the tight timeframe as requested does not allow us to give a comprehensive response.

Covid-19 Impact on the Labour Market:

8. In Q1 2020, before the pandemic, there were 2.35 million people in employment, with an unemployment rate at 4.8 per cent (CSO, 05 March).
9. At the peak of the economic fallout during the initial lockdown, in the first week in May, there were 598,000 workers temporarily laid off availing of the Pandemic Unemployment Payment (DEASP, 05 May). This was in addition to 456,000 workers having their wages subsidised by the State (Revenue, 30 April) and 225,662 unemployed and underemployed workers on the Live Register (CSO, 05 June).
10. Following a period of steady decline in the number of PUP claimants to 205,000 by the start of October, numbers are once again rising - to 342,500, as a result of localised and countrywide tighter restrictions due to a resurgence of the virus (DEASP, 9 November).
11. The CSO October unemployment statistics estimate a Covid-19 adjusted unemployment rate of 20.2 per cent (CSO, 04 November). The Department of Finance and the Central Bank are projecting an unemployment rate above 10 per cent in 2021 (PBO, 61 of 2020).
12. In total 753,030 workers have received at least one payment under the PUP scheme at a cost of €4 billion to date (DEASP, 9 November), in addition to the €3.5 billion spent to date on payments made via the wage subsidies (Finance, 13 November).
13. Congress recommends the need to stall the escalating budget deficit, must be second to controlling the spread of the virus as an imperative for the Government. Decisions on the reopening of society and the economy must be based on public health advice from the experts on NPHE, and not unduly

influenced by the business community and other vested interest groups who have no expertise in this field.

Pandemic Unemployment Payment:

14. Congress note the Government's commitment to further extend the PUP and wage supports closing date. Congress recommend their removal at the end of the emergency period be tapered. A cliff-edge removal would have repercussions for workers' income and hence consumer demand and redundancies in businesses still in distress, with the cost likely to fall on the Social Insurance Fund given the failure to fully implement the recommendations of the Duffy-Cahill report.

15. We note the reintroduction of the €350 payment rate for workers with prior gross weekly earnings of €400 or more, as called for by Congress. Two in five (41 per cent) of all PUP claimants are now on this rate, double or more the number of those on each of the three lower payment rates which puts to bed the misrepresentation that PUP claimants: "are a hell of a lot better off" since availing of the scheme.

16. Congress note the rates of subsidy provided under the Employment Wage Subsidy Scheme (EWSS) have been revised to better align to the PUP payment rates, from when level 5 restrictions were introduced on 21 October and will remain in place until 31 January. Such a measure is vital to avoid a preserve incentive to move from the EWSS to the PUP when businesses are restricted from trading and do not have a cashflow to top up workers' subsidised wage. While we acknowledge the reasoning given for not subsidising wages below €151.50 when the EWSS was introduced in July, Congress recommend this should not continue during shutdown periods.

17. Congress note DEASP's commitment to introduce new regulations that will extend the earnings reference period to September, to the benefit of PUP claimants who commenced employment after February, and will allow claimants whose earnings have been cut since February to have their PUP payment rate set by reference to their earlier, higher, earnings. We recommend the department actively engage in achieving this end without delay.

18. Congress note the introduction of an income disregard for self-employed PUP claimants. DEASP has yet to provide estimates of the number of claimants eligible to earn up to €480 gross over a four-week period while receiving the PUP. We note the very detailed weekly update published by DEASP on payments awarded for PUP. Appendices provide analysis by county, by sector, by age, by rates and gender, rates and age, by sector, of people who closed their claim to return to work. Congress calls for analysis by employment status (employee or self-employed) and by employment status and sector to be included in the weekly update.

19. Congress note the recent work by the CSO and DEASP which finds one in four (25.4 per cent) of the 87,000 PUP claimants aged under 25 years are full-time students (CSO, 4 November). This is an important finding as the policy response to reduce the long-term scarring effect from youth unemployment for young students and young workers are very different. In particular, unemployed persons in full-time education are not eligible to receive Unemployment Assistance or Unemployment Benefit. Without the PUP scheme compensating for depriving them of their livelihood many unemployed students could not afford to remain in education to the detriment of their future earnings and opportunities.

20. Congress have expressed concern about the effect of the PUP on the Social Insurance Fund. The move to define the pandemic specific payment as a social insurance benefit and recoup PUP expenditure since March from the SIF following the passage of the Social Welfare (Covid-19) (Amendment) Bill in August will see significant reductions in the SIF reserves and likely to return it to an annual deficit in the immediate future, placing greater urgency on increasing the pension qualifying age.

21. Following the passage of the Social Welfare (Covid-19) (Amendment) Bill in August, PUP claimants are required to be "genuinely seeking" employment to be eligible for the payment. In the eyes of the law, these workers are no longer laid-off, waiting to return to their job, they are unemployed. That the same department has repeatedly suspended these workers' right to demand redundancy is grossly anomalous and deeply unfair.

22. Congress note the role of ‘control and compliance’ checks in DEASP’s work and the importance of ensuring the Exchequer resources are protected and distributed only to eligible people covered by a scheme. We have expressed concern over the department’s powers to deny workers the PUP for travelling outside of the state and sought clarification on the criteria used to identify which flights were to be checked by departmental officials. Congress recommend the review clarifies what occurred.

23. Congress has long advocated for a more generous welfare system to adequately protect workers’ living standards during interruptions in earnings – unemployment, sickness, maternity, retirement, etc. We recommend priority be given to moving from flat-rate welfare payments to an earnings-related system of income supports post pandemic, in line with the PUP and Continental and Nordic income protection models, with a social floor above the poverty line for all payments.

24. The length and depth of the Covid-19 recession will be determined to a very large extent by the policies that we choose now. Now is also the time to consider the type of economy and social safety net we want in the long-run, which must be based on the values of solidarity, fairness and equality as well as inclusive, participative and sustainable development.

Submission from Fórsa

16th November 2020

Clerk of the Committee,
Committee on Social Protection,
Community & Rural Development,
and the Islands.

Via email spcri@oireachtas.ie

To Clerk of the Committee,

Following the announcement on the 6th November by Minister Naughton, inviting submissions from members of the public and interested bodies on the operation of the PUP, TWSS and EWSS as administered by the Department of Social Protection, Fórsa Trade Union, would like to make a brief submission with particular reference to the operation of the Temporary Wage Subsidy Scheme.

Fórsa Trade Union has sole negotiation rights for Cabin Crew across the airlines based in the Republic of Ireland. Since the onset of the pandemic Cabin Crew have suffered severe financial hardship due to catastrophic reduction of their basic salaries and working hours. They have endured this hardship now for eight months and with no line of sight as to when aviation may return to normality their employers will continue to temporarily place them on shorter working weeks enduring reduced salaries.

The Temporary Wage Subsidy Scheme (TWSS) was first introduced on 26 March 2020 to provide income support to eligible employers where the business activities have been negatively impacted by the COVID-19 pandemic but who continue to keep employees on payroll.

Aviation is severely impacted by COVID 19 and it remains unknown when this is likely to return to normality. All Airlines, where we have members employed as Cabin Crew, operated the TWSS scheme during the period of March to 31st August 2020.

Some employers continued to lay off their staff and paid them the TWSS directly during this period, for those employees though this period of time remains un-reckonable for service due to Section 12a of the Redundancy Act not being amended to include same. We contend that as this was paid through their employer it should be considered as reckonable service.

During the period of January and February airlines operate a winter schedule with a reduction in flights. In some employments, the vast majority of a cabin crew salary is calculated through a combination of basic pay and variable pay (based on number of flights operated), due to the winter schedule their average earnings were reduced for this period. The operation of the TWSS was set that an employee's subsidy would be based on their January 2020 and February 2020 Average Revenue Net Weekly Pay and therefore in some incidences cabin crew members received less than the PUP payment of €350pw.

Whilst we understand all employers paid the full amount of TWSS received to their employees they still reduced their working hours significantly. The payment of TWSS was used to subsidise their reduced salary which was processed through payroll (whether this was 50% of basic pay, or for hours worked).

Whilst the complexities of how the TWSS was administered varies from company to company one simple fact remains the same. No cabin crew member has worked 100% of their working week since the 1st April 2020, and no cabin crew member has been in receipt of 100% of their basic salary since the 1st April 2020.

To our knowledge no cabin crew member has received Short-Time Work Support during the period of April to end of August 2020, despite this being a form of income support for people who have been temporarily placed on a shorter working week by their employer. This payment should be made in respect of the days of work that have been lost.

Therefore as our members working rosters will confirm their hours of work were reduced by 50% or more during this period, and in these circumstances they question why their claims for Short Time Work Support have yet to be processed. The continued delay in processing these claims has contributed further to our members anxiety and frustration. It remains a fact that there is no line of sight of when aviation will return to normality.

With the introduction of the EWSS from the 1st September 2020 it was confirmed by the Department of Social Protection that our members could apply for Short Time Work

Supports. It must be stated though that we are aware of multiple incidences whereby our members have been refused other supports whilst in receipt of the EWSS and Short Time Work Supports such as back to school allowances and suzie grants. This is contributing further to their stress and anxiety whilst the future return to normal working hours remains unknown.

Finally it is our contention that whilst our members were temporarily placed on a shorter working week by their employer during the period of April to 31st August 2020 their claim for short time work supports should be processed and that this should be rectified and back dated accordingly.

Ashley Connolly,
Assistant General Secretary,

Submission from Deirdre Twohig, Independent Tour Operator

I am a Failte Ireland trained self employed Tourist Guide I work with incoming tourist in the leisure tour industry and also with corporate incentive and conference and convention groups, mostly with international English speaking visitors.

My diary of bookings was full for 2020 but due to Covid-19 and travel restrictions these bookings were mostly postponed to 2021 with some cancelled. I have not worked since March 2020 and was refused the PUP as since May 2019 I have received my state contributory pension and was informed I could not receive both.

I submit there is an anomaly in this system as a person is entitled to the greater benefit ie a widower /widow in receipt of pension receives the greater when aged 66 they are due their state contributory pension.

Also PAYE employees have received payment by way of the employers Covid subsidy. My contributory state pension is included in my 2019 tax return. I would normally earn €500 gross per week.

I belong to the Association of Tourist Guides of Ireland (ATGI) which has a great number of members in this position who work on to their 70's.

FLAC Submission to Oireachtas Committee on Social Protection, Community and Rural Development and the Islands' Review of the Pandemic Unemployment Payment (PUP) Scheme.

December 2020

About FLAC:

FLAC (Free Legal Advice Centres) is one of Ireland's oldest civil society organisations. It is a voluntary, independent, legal and human rights organisation which for the last fifty years has been promoting access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights.

FLAC works in a number of ways:

- ☐ Operates a telephone information and referral line where approximately 12,000 people per annum receive basic legal information
- ☐ Runs a nationwide network of legal advice clinics in 71 locations around the country where volunteer lawyers provide basic free legal advice to approximately 12,000 people per annum
- ☐ Is an independent law centre that takes cases in the public interest, mainly in the area of homelessness, housing, discrimination and disability
- ☐ Operates a Roma legal clinic
- ☐ Has established a dedicated legal service for Travellers.

- ☐ Operates the public interest law project PILA that operates a pro bono referral scheme that facilitates social justice organisations receiving legal assistance from private practitioners acting pro bono.
- ☐ Engages in research and advocates for policy and law reform in areas of law that most affect marginalised and disadvantaged

You can access FLAC's policy papers at: <https://www.flac.ie/publications/category/policy/>

FLAC Submission to Oireachtas Committee on Social Protection, Community and Rural Development and the Islands' Review of the Pandemic Unemployment Payment (PUP) Scheme.

Introduction

FLAC welcomes the opportunity to make a submission to the Oireachtas Committee on Social Protection, Community and Rural Development and the Islands in the context of their review and examination of the Pandemic Unemployment Payment (PUP) Scheme. We are happy to clarify any point or expand on the contents of this submission and attend at the Special Committee in person or by video conference or otherwise.

Since the onset of the Covid-19 pandemic, FLAC has advocated for the PUP Scheme to be administered in a fair manner having regard to human rights and equality standards, and has sought to highlight operational issues with the scheme which may have created barriers to certain persons or groups accessing the payment.

FLAC made a detailed submission to the Oireachtas Special Committee on Covid-19 in relation to the State's legislative response to the pandemic and appeared before that Committee on 9 September 2020. FLAC's submission to that committee highlighted a number of concerns in relation to the operation of the PUP Scheme.¹ Unfortunately, many of the issues FLAC raised at that juncture remain unresolved.

Since appearing before that Committee, FLAC has continued its research and analysis relating to the operation of the PUP Scheme. We have also provided legal representation to a number of people in relation to their entitlement to the payment.

In this submission, FLAC will highlight issues in relation to the following:

1. The actions of Social Welfare Inspectors at airports and ports and the impact of those actions on claimants of the PUP.
2. The absence of regulations in relation to entitlement to the PUP during absences from the State.
3. The requirement to "Genuinely Seek Work" while in receipt of the PUP and the absence of regulations in relation to same.
4. The lack of clarity surrounding how residents in Direct Provision may access PUP arrears.
5. The proposal in section 3 of the Finance Bill 2020 to retrospectively create a tax liability in respect of PUP payments received from March 2020.

¹ FLAC's full submission to Oireachtas Special Committee on COVID -19 Response can be accessed in full at: <https://www.flac.ie/publications/flac-submission-to-the-oireachtas-special-committee/>

The actions of Social Welfare Inspectors at airports and ports and the impact of those actions on claimants of the PUP.

Beginning in June 2020, significant concerns arose around about the actions of the Department of Social Protection at Ports and Airports. In response to this, FLAC sought to highlight the statutory limits on the powers of Social Welfare Inspectors in such settings. While section 250(16B) of 2005 gives Social Welfare Inspectors certain powers in respect of questioning persons at airports, these powers may only be exercised where that Inspector has some “reasonable grounds” of suspicion for questioning a specific person. Accordingly, the 2005 Act does not provide a legal basis for a policy of “blanket” questioning at airports whereby all individuals are questioned before boarding a specific flight or where individuals are questioned without the Inspector having a reasonable grounds for believing that they may be committing a breach of the social welfare code.

In late July 2020, the Minister for Social Protection announced that she had “directed the department to review all cases to date where people who went on holiday and had their payment stopped”. The results of this review were announced the following day with the Department stating that of the 2,500 claims for the Covid PUP which were suspended on foot of airport checks, only 85 such suspensions arose in cases where the claimant was not leaving the State permanently. In the Irish Times, the Department is reported as stating that persons subject to this review were deemed to have left the country permanently in circumstances where the Department did not have evidence of them “[returning] to the country seeking to have their payment reinstalled”. FLAC has concerns that many persons whose claims for the payment was suspended on foot of airport checks conducted contrary to the 2005 Act, may not have had their payment restored simply because they did not inform the Department of their return to the State (having never been requested to provide such information to the Department). In addition it is unclear whether, having returned to the State, their payment was restored and backdated.

The Department of Social Protection has since stated that it has not carried out any airport checks since 16 July 2020. Further, FLAC is also aware that the Data Protection Commissioner is currently investigating the issues around data protection which arise from the Department’s actions in this regard. However, FLAC has a number of outstanding questions in relation to the Department’s actions during this period:

First, subsequent to the “review” conducted by the Department of claims suspended on foot of airport checks, the Department was obliged to release information under FOI which raises significant concerns in relation to the selection of flights to certain countries for airport checks. That information shows that the Department operated checkpoints at the departure gates of 30 flights between 1 April 2020 and 13 June 2020. Of these 30 flights, 70% were destined for locations in Romania or Moldova. The fact that each passenger boarding such flights was subject to questioning by the Department raises the worrying implication that Departmental officials were operating under a policy whereby travelling to a certain location was considered by the Department to be a “reasonable ground” for suspecting that a person was breaching social welfare law. In FLAC’s view any such policy would be highly suspect and likely to be discriminatory as it would appear to target the person’s nationality, rather than any objective criterion independent of nationality.

Second, it is clear that the “review” conducted by the Department may not have restored the payments of all those whose claims were wrongly suspended. The Department’s actions at airports are reflective of the policy set out in Departmental Circular 35/20. That circular mandates the suspension of claims for Jobseeker’s Allowance, Supplementary Welfare Allowance and the Covid on foot of any absence from the State which does not comply with the Department of Foreign Affairs’ travel advice. FLAC’s previous submissions (including our submission to the Oireachtas Special

Committee on Covid-19 Response) have highlighted that there is no legislative basis for suspending claims for Jobseeker's Allowance and Supplementary Welfare Allowance during absences provided that those absence are not such as to support a finding that the claimants are no longer normally resident in Ireland. This was similarly the case in relation to the Covid PUP during the period 13 March 2020 to 5 August 2020 (before the payment was put on a specific legislative basis).

Third, it appears that in some instances such suspensions were put in place on foot of airport checks at no notice to the claimant. Such a policy represents a flagrant breach of claimants' rights to fair procedures and, specifically, their right to respond to any allegation that they were acting in a manner which disentitled them to a social welfare payment.

Finally, the Social Welfare Appeals Office frequently emphasises that while the initial burden of proving entitlement to a particular payment is placed on the claimant, in circumstances where a payment is stopped by the Department, it is the Department that bears the burden to prove disqualification. In the case of those who had their claim disallowed after they travelled from the State, the Department does not appear to have initiated a rigorous investigation to assure itself that the person has become dis-entitled before stopping the payment and has effectively put the burden on the claimant to prove their entitlement twice.

None of these concerns have yet been acknowledged, let alone addressed, by the Department to date. FLAC's concerns in this regard are illustrated by the experience of one of our clients, whose claim for the Covid PUP was suspended after she travelled to Romania in April 2020 to attend to a family emergency. Every passenger who boarded her outward bound flight was subject to questioning by Departmental officials who did not identify themselves properly or explain why they were requesting certain information from passengers. Information released under FOI shows that the decision to suspend our client's claim for the PUP was made by a Social Welfare Inspector who had no legislative authority to make such a decision. Further, the suspension was put in place at no notice to her and without any written decision issuing to her so that she could understand the reason for the decision and appeal same if she did not agree with the decision. This woman suffered significant financial hardship as a result of the suspension which remained in place until she returned to work in August 2020. FLAC made representations to the Department on behalf of our client raising concerns at the manner in which her payment had been suspended, the absence of a legal basis for the Department's actions, the absence of fair procedures and the potentially discriminatory nature of the Department's actions. A settlement on confidential terms was reached in that instance.

FLAC is concerned that there may be many other persons (whose claims were stopped on foot of airport checks, in circumstances where there was no legal basis for suspending their claims due to an absence from the State) whose claims have not been restored or where the person is yet to receive a back-payment for the period of unlawful suspension.

Recommendations

The Government should commit to commissioning an independent review of the activities of Social Welfare Inspectors at ports and airports with a view to establishing how many persons' claims for social welfare payments were suspended on foot "airport checks" which were conducted in a manner contrary to the 2005 Act and contrary to claimants' right to fair procedures. Such a review must also examine the manner in which flights were selected for such checks and the findings of the review and any recommendations should be published

The Department should review all claims for social welfare payments which were suspended on foot of airport checks with a view to ascertaining whether the checks were carried out lawfully, whether

any suspension arising from the checks was allowed under primary legislation in relation to the relevant payment and whether the claimants subject to such checks were afforded fair procedures or given any notice before a suspension was put in place. The Department should lift any suspensions which were imposed arising from airport checks conducted contrary to the 2005 Act or which were imposed in circumstances where the relevant primary legislation did not allow for a suspension on the basis of an absence from the State alone. Further, claimants subject to suspensions under such circumstances should be notified that their claim is being reviewed to allow each claimant to respond to the review and each claimant should be awarded back payments for the period of any unlawful suspension.

The absence of regulations in relation to entitlement to the PUP during absences from the State.

Section 249(1) of the Social Welfare Consolidation Act 2005 (as amended) disentitles claimants to the Covid PUP during absences from the State except “where regulations otherwise provide”. No regulations have been made by the Minister to provide for entitlement to the payment during holidays or absences from the State for essential purposes.

By contrast, article 217(d) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (Statutory Instrument 142 of 2007) provides that claimants for Jobseeker’s Benefit and Jobseeker’s Benefit (Self-Employed) are not disentitled to their payments while they are “on holiday, in accordance with the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs, in respect of the first two weeks of any such absence in a calendar year”. Further, the Department, on an administrative basis, allows claimants for Jobseeker’s Allowance and Supplementary Welfare Allowance to remain in payment while on holidays (subject to the same conditions).

In addressing the Dáil on 29 July 2020, the Minister for Social Protection stated:

“As I am currently bringing legislation through the Oireachtas to put PUP on a statutory basis, I intend to sign regulations that will bring the PUP payment in line with Jobseeker’s. That will mean persons on PUP can travel to Green List countries and their payment will not be impacted. As with Jobseeker’s, persons travelling to countries outside the Green List can only do so for essential reasons.”

The Minister has yet to sign any such regulations and as a result it does not appear that the Covid PUP is payable to claimants during any absences from the State regardless of the reason for such travel or however short its duration.

Further, FLAC is also concerned that the strict “holiday rules” being implemented by the Department (as reflected in Departmental Circular 35/20) represent an arbitrary and punitive imposition of travel restrictions on those who are in receipt of certain social welfare payments. As highlighted in the above submissions on “airport checks”, these new “holiday rules” seem to exceed the conditions allowed for under primary legislation in many instances. While “the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs” exists only as guidance for the majority of the population, the same advice is being enforced with harsh, punitive effect against persons who are in receipt of certain social welfare payments. It is arguable that such Regulations fails the “principles and policy” test, in that the primary legislation does not envisage that the Regulations that the Minister is allowed to adopt being directed to enforcing public health and travel advice and so may be *ultra vires* the power of the Minister concerned.

Recommendations

The Minister for Social Protection should urgently introduce regulations allowing claimants of the Covid PUP to take holidays/leave the State.

The Minister should review its administrative “Holiday Rules” for all payments (including the Covid PUP) and ensure that the rules applied in respect of each payment are reflective of the conditions in respect of absences from the State arising from primary legislation and not more restrictive.

The requirement to “Genuinely Seek Work” while in receipt of the PUP and the absence of regulations in relation to same.

The Social Welfare (Covid-19) (Amendment) Act 2020 introduced a requirement to “genuinely seek work” while in receipt of the Covid PUP. Section 68L(1) of the 2005 Act (as amended by the 2020 Act) provides that, in order to be eligible for the Covid PUP, a person must be “genuinely seeking, but is unable to obtain, employment suitable for him or her having regard to his or her age, physique, education, normal occupation, place of residence and family circumstances”. Further, section 68L3 of the 2005 Act provides that a person is disentitled to the payment if he or she:

“(c) has refused an offer of suitable employment,

(d) has failed or neglected to avail himself or herself of any reasonable opportunity of obtaining suitable employment”

FLAC has concerns about the imposition of a requirement for claimants to “genuinely seek work” whilst in receipt of the Covid PUP. Although, the 2020 Act does not apply the condition retrospectively, the condition may have an adverse impact on many claimants’ eligibility for the payment following its enactment.

The “eligibility notice” for the Covid PUP on the application form promulgated by the Department has always stated (and still states) that the payment is available to those who “have been temporarily laid-off from work”. Many employees and owners of businesses which are currently closed but intend to reopen are in receipt of the Covid PUP. It seems unreasonable to expect such claimants to seek alternate work in circumstances where they have every expectation of resuming employment imminently. Further, employees who have been laid off may have to forego statutory redundancy payments from their original employer if they take up other employment elsewhere which obliges them to give notice in their previous employment. The right of an employee to pro-actively claim a redundancy lump sum where they have been on lay-off for four or more continuous weeks was temporarily removed for the duration of the Covid crisis by section 29 of the Emergency Measures in the Public Interest (Covid 19) Act 2020. Thus, if such a person did find another job, they would have to forego all statutory redundancy as well as minimum notice entitlements. Further, those who have no access to child care services due to the pandemic may be unable to seek work while in receipt of the Covid PUP and their entitlement to same may therefore be prejudiced.

While the Minister and representative of the Department of Social Protection have made statements to the effect that this requirement to “seek work” is currently not being enforced by the Department, this position is not reflected in the legislation governing the scheme.

Unlike other payments where claimants are required to “genuinely seeking work”, the Minister has not introduced any regulations in relation to how claimants are to be assessed as “genuinely seeking work” whilst in receipt of the Covid PUP. The introduction of such regulation would provide welcome clarity as to the how the requirement to genuinely seek work is currently operating in the context of the Covid PUP.

Finally, FLAC is concerned that the Department has adopted a policy (by way of Departmental Circular 35/20) to the effect that, where claimants are in receipt of a payment which requires them to “genuinely seek work”, this criteria cannot be satisfied during the two-week period of self-isolation advised following a claimant’s return from certain countries. Given the proliferation of online working and recruitment, the basis for this policy is questionable. Further, many citizens may need to self-isolate for any number of reasons aside from having recently engaged in international travel; however, the Department has not published anything to suggest that claimants of Jobseeker’s Benefit should withdraw their claim for the payment while self-isolating for other reasons. It is thus worth questioning whether the proposition that those who are self-isolating after travelling abroad are unavailable for work or not seeking work is sustainable and also whether it puts pressure on claimants not to self-isolate in such circumstances.

Recommendations

The Department should review the imposition of a requirement to “genuinely seek work” while in receipt of the Covid PUP. At the very least, regulations should be introduced setting out how this criteria is to be applied to claimants for the payment which take into account the fact that many claimants have limited access to childcare and, further, that many claimants for the payment are temporarily laid-off and have every expectation of resuming their previous employment or self-employment.

The Department should review Departmental Circular 35/20 including the rigid policy contained therein to the effect that persons cannot be considered to be “genuinely seeking work” during periods when they are advised to self-isolate.

PUP arrears owed to residents of Direct Provision.

In announcing that employees resident in Direct Provision Centres would be able to access the Covid PUP in August 2020, the Minister for Social Protection stated that the “payment will be paid with effect from when they were temporarily laid-off”. However, it appears that when such resident’s claims are granted by the Department, the arrears due to them are not paid immediately and no information is provided in relation to when they should be expected.

FLAC recently made representations to the Department on behalf of a resident in Direct Provision who had been laid off in March 2020 but whose claim for the PUP was only awarded in August. As a result, she had suffered acute financial hardship in the intervening period. The woman was aware of the Minister’s statement to the effect that arrears would be paid in such cases but did not know how to access them. In that instance, the arrears were paid after representations from FLAC to the Department. However, the case raises concerns that there may be other workers who are resident in Direct Provision centres who may not be aware that they are owed Covid PUP back-payments, or who may be having difficulty accessing their PUP back-payments.

FLAC understands that the Department intends is currently undertaking a review of claims for the Covid PUP with a view to establishing how many claimants may be owed arrears of the payment. It is clear that any such review should include a calculation of the arrears owed to claimants of the payment who are resident in Direct Provision.

Recommendation

The Department’s ongoing review of outstanding arrears owed to claimants of the PUP should ensure that claimants who are resident in Direct Provision have received arrears in respect of any

time since they were laid-off during which they were not in receipt of the payment. The Department should also undertake to ensure that residents in Direct Provision are fully aware of their entitlement to the PUP.

The proposal in section 3 of the Finance Bill 2020 to retrospectively create a tax liability in respect of PUP payments received from March 2020.

On 24 November 2020, FLAC wrote to members of the Oireachtas to highlight its concerns in relation to the provisions of section 3 of the Finance Bill 2020.² Those concerns relate to the imposition of tax liability to the Covid PUP on a retrospective basis. Specifically, FLAC sought to highlight that:

- ☐ The retrospective provisions of the 2020 Bill may create an unexpected tax liability which disproportionately effects those who have suffered the most financial hardship as a result of the Covid-19 pandemic. An analysis of the information available to claimants for the payment since March suggests that they cannot be expected to have been aware that such a tax liability would arise.
- ☐ These retrospective provisions may not be in accordance with the constitutional protection of citizen's property rights which only allow for the introduction of retrospective legislation which interferes with those rights in very limited circumstances.

We understand that the 2020 Bill at Report Stage in the Dáil on 2 December 2020 before consideration of the Bill begins in the Seanad on 9 December 2020. We hope that FLAC's analysis of section 3 of the 2020 Bill will be considered as the legislation progresses through the Oireachtas.

² FLAC's Briefing Note to members of the Oireachtas in relation to the provisions of section 3 of the Finance Bill 2020 can be accessed at: <https://www.flac.ie/publications/note-re-s3-of-the-finance-bill-2020-final/>

FLAC Submission to the Oireachtas Special Committee on COVID -19 response.

September 2020

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- Operates the public interest law project PILA that operates a pro bono referral scheme that facilitates social justice organisations receiving legal assistance from private practitioners acting pro bono.
- Engages in research and advocates for policy and law reform in areas of law that most affect marginalised and disadvantaged

FLAC's submissions most relevant to the subject matter of this committee include

- FLAC Submission to the "Workplace Relations Commission on the Consultation Paper on Remote hearing and Written Submission Dealing with Adjudication Complaints During the period of Covid-19 Related Restrictions"
- FLAC Submission to the Joint Oireachtas Committee on Justice and Equality: Access to Justice & Costs
- FLAC Submissions to the Review of Administration of Civil Justice February and June 2018
- FLAC Submission to the Courts Service Statement of Strategy 2018- 2020, October 2017
- FLAC Submission on High Court Practice Direction 81.

You can access FLAC's policy papers at: <https://www.flac.ie/publications/category/policy/>

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Introduction

FLAC welcomes the opportunity to make a submission to the Oireachtas Special Committee on COVID -19 response. We are happy to clarify any point or expand on the contents of this submission and attend at the Special Committee in person or by video conference or otherwise.

FLAC's response to the Covid-19 Crisis

Our Telephone Information and Referral Line remains open. Our Phone line team is determined to provide quality information to callers during this crisis and we have taken steps to reinforce the phone line service to seek to ensure quality. However it is extremely difficult to meet and respond appropriately to the level of demand that the phone line is experiencing. In addition the calls are more complex and are taking longer due to ongoing changes in regulations policies and practices and the lack of usual supports and somewhere to refer callers to.

Our Phone line provides a snapshot into the acute and stressful situations that people are facing as a result of the lockdown and the lifting of restrictions and the re-imposition of some restrictions. The nature of the calls has change over the last six months. They include queries about Social welfare, access, domestic violence, people who have been made unemployed, people who cannot get the Covid payment, people who are afraid of being evicted, people who are worried about their capacity to pay the arrears in mortgage, people who have been unable to get legal aid for divorce proceedings, people who are nervous going into Court because of Covid, and a wide range of employment law related queries which are described below.

Phone legal advice clinics.

In response to the Government issued guidelines, FLAC closed all of our free legal advice clinics around the country for the safety of our volunteers and service users. FLAC have organised Phone Legal Advice Clinics in response to the urgent need for legal advice in the areas of family law and employment law.

FLAC have also produced a series of 'FLACsheets' to provide information on rights during the current, including a FLACsheet on Employment Law Rights during Covid-19 outbreak. We ran webinars on employment rights and family law rights during Covid. As part of a series of webinars for charities on the law and Covid-19, PILA & TrustLaw hosted a webinar on Employment Law.

Benefit take up campaign on rent supplement

Flac published an information sheet outlining the details of the newly extended rent supplement scheme which was designed to assist those struggling to pay rent in private accommodation during the Covid-19 pandemic.

Although this scheme was expanded to meet Covid-19 demands in March, there was relatively low uptake because not many people were unaware that they may qualify under the new criteria. FLAC wanted to ensure that people who are struggling to make their rent are aware of the rent supplement support so that they can apply for assistance. In the absence of this information being widely circulated by the Department of Social Protection, many people were unaware that they may qualify for this assistance since the scheme was expanded in March. We urged people to apply as soon as possible as the scheme was now been extended.

FLAC has been asked to address the following matters:

1. how the State's legislative framework contributed to an effective response to the current crisis;
2. how this compares to the use of statutory frameworks in other jurisdictions;
3. how the legislative framework might be improved upon to deal with similar major events in the future and the constitutional/legal risks that should be considered in this context;

4. how well statutory Instruments/regulations, as opposed to guidelines and public health advice, were communicated to those who needed to be aware of them, the methods used and how this compares to the practice in other jurisdictions?

Given the limited time available it has not been possible to address all of the queries raised and carry out the requisite research into other jurisdictions. In making this submission we have drawn on our experience in the information lines and phone advice clinics, our policy work to date, our work with Travellers and Roma, our experience in litigation as well as the queries received through PILA.

Human Rights Context:

In considering the State's legislative framework and the extent to which it contributed to an effective response, our work to date, has shown how human and equality rights can play a valuable and practical role as a safeguard during the pandemic. FLAC would like to draw the Committee's attention to relevant Human Rights and equality framework.

All states in Europe, whether they are members of the Council of Europe or European Union, have committed to upholding human rights, democracy and the rule of law, including under the European Convention on Human Rights, EU Charter of Fundamental Rights and UN treaties. The State has specific obligations under Irish equality legislation as an employee and a service provider which apply in normal times and a pandemic. *"Times of crisis can exacerbate existing inequalities and render people more vulnerable. COVID- 19 has a disproportionate impact on certain groups in society, for example older people, people with disabilities, minority ethnic groups and women."*¹

The Siracusa principles

The Un Commission on Human Rights, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28th September 1984² set out that while human rights can be curtailed in a public health emergency, these curbs must be placed in legislation, subject to regular review, and offer redress, alongside being proportionate and no more than what is required to meet the emergency.

ENNHRI Statement

ENNHRI, the European Network of National Human Rights Institutions issued a Statement 23rd April with the following principles which have been summarized. The full text of the Statement is in [appendix 1](#).

1. Human rights remain in force in a time of crisis
2. Measures must be legally-based, proportionate and time-limited
3. Measures cannot have any discriminatory impacts
4. Situations of vulnerability must be addressed
5. Broad public debate is as important as ever
6. Parliaments must hold governments to account
7. Judicial independence must be protected
8. Restrictions on democratic rights must be kept in check
9. States should engage with their NHRIs

1 IHREC guidance on COVID-19 and the Public Sector Equality and Human Rights Duty
2 <https://www.refworld.org/docid/4672bc122.html> [accessed 31 August 2020]

COVID-19 and the Public Sector Equality and Human Rights Duty. IHREC has produced a guidance note on the Public Sector Equality and Human Rights Duty. Section 42 of the 2014 IHREC Act places a legal obligation on all public bodies, in their daily work, to have regard to the need to: eliminate discrimination; promote equality of opportunity and treatment for staff and persons to whom it provides services; and protect the human rights of staff and service users.

The guidance note sets out key questions to consider in relation to developing responses, implementing responses, consultation, communication, and assessing/monitoring impact. FLAC submits that these questions are key question for the work of this committee.

Developing responses

- Have you taken action to ensure that special measures or changes in service delivery introduced in response to COVID-19 are non- discriminatory?
- Have you considered the specific needs of people protected under the equality legislation: gender, civil status, family status, age, sexual orientation, disability, race, religion, membership of the Traveller community; and people at risk of poverty and social exclusion?
- Are there are specific targeted measures you need to consider to ensure that all persons are covered and no-one is left behind?
- Have you identified specific steps to make reasonable accommodation for people with disabilities?

Implementing responses

- Have you equality proofed any legislation, regulation or policies in terms of their impact across the grounds of the Equal Status Acts?
- Have you scrutinised any legislation, regulation or policies in terms of their impact on human rights; civil, political, economic, social and cultural rights?
- Have you reflected on your legal obligations as employers under the Employment Equality Acts to ensure any decision or policy you make in response to COVID-19 does not directly or indirectly discriminate against employees on any of the nine grounds protected under that legislation?

Consultation

- Have you consulted with civil society organisations, representatives of the equality grounds, and with staff and/or their representatives when a decision, plan or programme is at draft stage, seeking to involve everyone in your response?
- Have you consulted and coordinated planned action with other key actors and stakeholders working on the response to the issues identified?

Communication

- Are you proactively ensuring that all sections of the community have access to information, considering how traditional communication methods have been impacted by COVID-19?
- Have you taken any measures to adapt communications to target certain audiences, e.g. children?
- Is the language you use inclusive, recognises and respects diversity, and avoids prejudice and stigma directed to particular communities?

Assessing/monitoring impact

- Are you gathering and reviewing disaggregated equality data and information on the impact of COVID-19, for example gender, age, disability, sexual orientation, and ethnicity?
- Have you put in place a mechanism to monitor the impact of decisions, policies and plans on different groups, through feedback or complaint mechanisms?

- Have you in place a regular review process whereby your policies and plans are living documents that can be adapted based on emerging evidence from groups experiencing inequality and discrimination?”

Access to up to date accurate information about changes to the law. FLAC stress the importance of access to up to date information, especially where there are changes to the existing law. However, it has not always been possible to get access to legally binding measures before they come into force or immediately after they came into force, in order to carry out appropriate scrutiny or to become informed as their content and consequences for ordinary citizens

In some cases, there has been uncertainty as to whether particular measures are legally binding or merely advice/guidance – this leads to significant uncertainty for ordinary citizens and it is important that there is clarity around this issue. In a recent comparative example the New Zealand High Court recently found that Government and police had presented advice during the first nine days of lockdown as legally binding measures³

Recommendations

FLAC recommends that the Committee in its consideration would have regard to the human rights and equality infrastructure, the equality legislation and the role of the state as employer and service provider, the Siracusa Principles, the ENHRI statement of principles, and the key question set out in the IHREC guidance on COVID-19 and the Public Sector Equality and Human Rights Duty.

FLAC recommends that it is vital that there is up to date accurate information made available about changes to the law.

Issues arising from the Social Welfare Schemes and Legislation introduced in response to the Covid-19 Pandemic

Overview of Social Welfare Legislation introduced in response to the Covid-19 Pandemic

1. In response to the social and economic upheaval arising from the Covid-19 pandemic, the Minister for Employment Affairs and Social Protection introduced a number of Statutory Instruments to amend the rules relating to entitlement to existing social welfare schemes. Four such Statutory Instruments were signed by the Minister for Employment Affairs and Social Protection on 30 March 2020:
 - Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Emergency Measures In The Public Interest-Jobseeker’s Allowance) Regulations 2020 (S.I. No. 94/2020)
 - Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 3) (Emergency Measures in the Public Interest-Jobseeker’s Benefit) Regulations 2020 (S.I. No. 95/2020)
 - Social Welfare (Increase for Qualified Adult) Regulations 2020 (S.I. No. 96/2020)
 - Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 4) (Illness Benefit Payments Arising from Covid-19) Regulations 2020 (S.I. No. 97/2020)

³ Borrowdale v. DG Health [2020] NZHC 2090

2. Statutory Instruments No. 94/2020 and No. 95/2020 suspend the provisions of the Social Welfare Consolidation Act 2005 which disentitle claimants to Jobseeker's Allowance and Jobseeker's Benefit during the first three days of a period of unemployment. The 2005 Act specifically allows for such suspensions by way of regulation with the consent of the Minister for Public Expenditure and Reform (who also signed the relevant Statutory Instruments). The period of these suspensions have since been extended numerous times by way of Statutory Instrument, most recently by Statutory Instruments No. 309/2020 and No. 310/2020. These subsequent Statutory Instruments provide that the suspensions will remain in place until 17 September 2020.
3. Statutory Instrument No. 96/2020 provided for the Increase for a Qualified Adult in respect of claims for Jobseeker's Benefit, Jobseeker's Benefit (Self-Employed), and Illness Benefit to be raised to €147 (bringing the rate of these payments in line with the Covid Pandemic Unemployment Payment for those in receipt of such an increase). Statutory Instrument No. 308/2020 has extended the period to which these increases apply into September 2020.
4. Statutory Instrument No. 97/2020 provided for an enhanced scheme of Illness Benefit in respect of those unable to attend work due a diagnosis or suspected diagnosis of Covid-19 which necessitated a period of self-isolation. The Statutory Instrument inserted a new chapter into the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142/2007) which set out the eligibility criteria for the new scheme.
5. The Minister signed a further Statutory Instrument on 10 July 2020. The Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 9) (Absence from the State) Regulations 2020 (S.I. No. 242/2020) amended the "Holiday Rules" for Jobseeker's Benefit and Jobseeker's Benefit (Self-Employed) set out in article 217(d) of S.I. No. 142/2007. The rules, which previously allowed a claimant to continue to receive their payment during a two-week annual holiday from job-seeking, were amended to disentitle claimants to the payments where any such holiday was taken in a manner contrary to "the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs".
6. Notably, on 10 July 2020, a Departmental Circular was issued (Circular 35/20) which purported to suspend the statutory and administrative holiday rules in relation to Jobseeker's Benefit, Jobseeker's Benefit (Self-Employed), Jobseeker's Allowance, Supplementary Welfare Allowance and the Covid Pandemic Unemployment Payment. That circular provided that claimants for those payments would not be entitled to their payments during any period of travel abroad to a non-"Green List" country. It further provided that, where a claimant was required to "genuinely seek work" to claim such a payment, this criterion would not be satisfied in circumstances where they were advised to self-isolate following their travel abroad:
 "[If] it comes to the Department's attention that a person has continued to travel abroad, their claim should be suspended from payment for the duration of the period abroad and an additional 14 days. An overpayment can be considered if necessary."
7. The only primary legislation enacted in response to the social welfare issues arising from the Covid-19 pandemic is the Social Welfare (Covid-19) (Amendment) Act 2020. The 2020 Act was signed into law on 5 August 2020 and provided a statutory basis for the Covid Pandemic Unemployment Payment (which was introduced by the Department of Employment Affairs and Social Protection on 13 March 2020). The 2020 Act provides that, subsequent to its enactment, the Covid Pandemic Unemployment Payment (hereafter "the Covid PUP") is to be paid pursuant to the newly inserted Chapter 12B of Part 2 of the 2005 Act.

Issues Arising

8. FLAC has published a number of papers highlighting our concerns with the administrative and legislative response of the Department of Employment Affairs and Social Protection to the Covid-19 pandemic. The following such papers are included with this submission:
 - A. A paper in response to Circular 35/20 which highlights that the Department cannot introduce “Holiday Rules” for social welfare payments which are contrary to the rules in relation to absences from the State and entitlement to payments set out in legislation. The paper also raised concerns about the actions of the Department at ports and airports and highlighted that the power of Social Welfare Inspectors in such settings is subject to strict limits under the 2005 Act.[\(appendix 2\)](#)
 - B. A paper in relation to the Covid PUP Scheme introduced by the Department on 13 March 2020 which highlighted the absence of a clear legislative basis for the scheme until the enactment of the Social Welfare (Covid-19) (Amendment) Act 2020. The paper also addressed issues around the eligibility criteria for the scheme and raised concerns about the Department retrospectively introducing such criteria without any notice to claimants for the payment. [\(appendix 3\)](#)
 - C. A paper in relation to the Social Welfare (Covid-19) (Amendment) Act 2020 which highlighted the eligibility criteria for the payment under that legislation. The paper also raised concerns about the absence of regulations in relation to eligibility for the payment during absences from the State and in relation to the process for determining when a claimant is considered “genuinely seeking work” while in receipt of the payment. The paper also raised concerns about the imposition of a requirement for claimants for the payment to be “genuinely seeking work”.[\(appendix 4\)](#)
9. A number of issues highlighted in these papers remain active concerns for FLAC. These outstanding concerns will be highlighted in this submission which should be read in conjunction with the papers attached. Absence of a Clear Legislative Basis and Clear Eligibility Criteria for the Covid Pandemic Unemployment Payment between 13 March 2020 and 5 August 2020
10. In March 2020, the Department of Employment Affairs and Social Protection introduced the Covid Pandemic Unemployment Payment (hereafter “the Covid PUP”) in response to the Covid-19 Pandemic. The Department has since extended the period during which the Covid PUP will be paid until April 2021 and has announced that it will accept applications for the payment until 17 September 2020.
11. On 5 August 2020, the Social Welfare (Covid-19) (Amendment) Act 2020 was signed into law. The Act replaces the existing Covid-PUP scheme with a statutory scheme by amending the Social Consolidation Act 2005 to make specific provision for the payment. It is notable that the 2020 Act refers to the previous Covid PUP Scheme as “the payment known as the pandemic unemployment payment paid under section 202 in respect of that week”. Section 202 of the 2005 Act forms part of the Supplementary Welfare Allowance schemes and allows for the payment of Urgent Needs Payments. This is the first reference to the Covid PUP having been paid under the SWA scheme and, indeed, to the any legislative basis for the scheme during the period 13 March 2020 to 5 August 2020.
12. Prior to the introduction of the 2020 Act, no previous information published by the

Department made any reference to a legislative basis for the scheme. The only information published by the Department in relation to the eligibility criteria for the scheme were on the application form for the payment and on the webpage in relation to the payment on www.gov.ie.

13. Between 19 March 2020 and 5 August 2020 (when the payment was placed on a statutory footing by the 2020 Act), the section of the webpage on gov.ie in relation to the eligibility criteria for the Covid PUP was amended at least seven times. Most notably, in late July 2020, the page was amended to State that applicants are only eligible for the payment if they “are genuinely seeking work” and, further, to state that “Holiday entitlements rules are the same as those for Jobseeker’s Payments”. No information previously published by the Department indicated that this was an eligibility criterion for the payment or informed claimants that there were specific rules in relation to entitlement to the payment during absences from the State (save that they were required to be residents of Ireland when claiming the payment). full analysis of the eligibility criteria for the Covid PUP between 13 March 2020 and 5 August 2020 is contained in FLAC’s note on the topic, attached to this submission at Appendix 3. In FLAC’s submission, these additional eligibility criteria cannot properly be considered as having applied to the Covid PUP scheme during the period 13 March 2020 to 5 August 2020.
14. The paper at Appendix 3 also examines whether the Covid PUP can be properly considered as having been paid under section 202 of the 2005 Act during the period 13 March 2020 to 5 August 2020. It notes that payments under section 202 are subject to section 189 of the 2005 Act which requires any such payment to be means-tested. The Covid PUP was never subject to any form of means testing.
15. It is worth noting in this regard that all payments previously made by the Department under section 202, such as Urgent Needs Payments awarded by Community Welfare Officers, are only paid once it has been established that claimant’s means are not such as to enable them to meet an urgent expense. Indeed, the Humanitarian Assistance Scheme, which provides financial assistance to households to meet their essential needs in the aftermath of flooding, and which is paid pursuant to section 202, is subject to a means test in order to establish that the claimant does not have the means to meet their essential needs.
16. In circumstances where claims for the Covid PUP scheme were not means tested in any sense, it seems that it could not have been paid pursuant to the SWA Scheme and that the Covid PUP scheme, during the period 13 March 2020 to 5 August 2020, should properly be considered as having been paid pursuant to a non-statutory, administrative scheme.
17. The lack of clarity in relation to the legislative basis and eligibility criteria for the Covid PUP during this period is regrettable of itself in that it potentially caused confusion among potential claimants as to their entitlement to the payment. Further, the lack of clarity exacerbated other issues in relation to the Covid PUP scheme which will be examined below.

Actions of the Department of Social Protection at Ports and Airports

18. Beginning in June 2020, significant concerns arose around about the actions the Department of Social Protection at Ports and Airports. FLAC’s note on the issue of holiday rules for social welfare payments (attached to this submission at Appendix 2) highlighted the limits on the Department’s powers in this regard under the 2005 Act. While section 250(16B) of 2005 gives Social Welfare Inspectors certain powers in respect of questioning persons at airports, these powers may only be exercised where that Inspector has some “reasonable grounds” of suspicion for questioning a specific person. Accordingly, the 2005 Act does not provide a legal basis for a policy of “blanket” questioning at airports whereby all individuals are questioned

before boarding a specific flight or where individuals are questioned without the Inspector having a reasonable grounds for believing that they may be committing a breach of the social welfare code.

19. It is notable that while the 2005 Act provides for specific procedures in relation to the provision of information to Social Welfare Inspectors from Financial Institutions, Employers and Landlords, there is no provision in the Act in respect of the provision of information by ports, airports or airlines.
20. FLAC welcomes the decision of the office of the Data Protection Commissioner to instigate an investigation in relation to the actions of the Department in this regard. However, FLAC has outstanding concerns in relation to the suspension of social welfare payments on foot of unlawful airport checks conducted by the Department. As well as the concerns around data protection which arise in this regard, FLAC has concerns about the Department adopting a blanket policy of suspending certain social welfare payments during absences from the State in circumstances where there may be no basis for such a policy pursuant to the relevant primary legislation.

Suspension of Social Welfare Payments due to Absences from the State

21. FLAC's note on the issue of holiday rules for social welfare payments (attached to this submission at Appendix 2) highlighted that there is no legislative basis for suspending claims for Jobseeker's Allowance and Supplementary Welfare Allowance during absences provided that those absence are not such as to support a finding that the claimants are no longer normally resident in Ireland. This was similarly the case in relation to the Covid PUP during the period 13 March 2020 to 5 August 2020.
22. In the case of Jobseeker's Benefit and Jobseeker's Benefit (Self-Employed) regulations have been put in place to disentitle claimants to the payment during absences from the State which are not in compliance with "the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs". No such regulations have been put in place for the Covid PUP scheme under the 2020 Act and it is therefore the case that that payment is not payable during any absence from the State. The contents of Departmental Circular 35/20 are indicative, however, of a Departmental policy of suspending claims for Jobseeker's Allowance, Supplementary Welfare Allowance and the Covid PUP (prior to the enactment of the 2020 Act) on foot of any absence from the State which do not comply with the Department of Foreign Affairs travel advice. As noted above, by contrast to Jobseeker's Benefit and the Covid PUP scheme under the 2020 Act, there is no legislative basis for adopting this policy by way of circular or otherwise.
23. Further, it appears that in some instances such suspensions were put in place on foot of unlawful airport checks at no notice to the claimant. Such a policy represents a flagrant breach of claimants' rights to be subject procedures and, specifically, their right to respond to any allegation that they were acting in a manner which disentitled them to a social welfare payment.
24. While the Minister for Social Protection, on 29 July 2020, committed to a review of all social welfare claims which were stopped on foot of airport checks, FLAC is aware of a number of cases where person's (whose claims were stopped on foot of airport checks, in circumstances where there was no legal basis for suspending their claims due to an absence from the State) claims have not been restored or where the person is yet to receive a back-payment for the period of unlawful suspension.

25. FLAC is also concerned that the strict holiday rules were being implemented by the Department (as reflected in Circular 35/20) represent an arbitrary and punitive imposition of travel restrictions on those who are in receipt of certain social welfare payments. While “the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs” exists only as guidance for the majority of the population, the same advice was being enforced with harsh, punitive effect against persons who are in receipt of certain social welfare payments.
26. Finally, FLAC is concerned that the Department has adopted a policy to the effect that, where claimants are in receipt of a payment which requires them to “genuinely seek work”, this criteria cannot be satisfied during the two-week period of self-isolation advised following claimant’s return from certain countries. Given the proliferation of online working and recruitment, the basis for this policy is questionable. Further, many citizens may need to self-isolate for any number of reasons aside from having recently engaged in international travel; however, the Department has not published anything to suggest that claimants of Jobseeker’s Benefit should withdraw their claim for the payment while self-isolating for other reasons. It is thus worth questioning whether the proposition that those who are self-isolating after travelling abroad are unavailable for work or not seeking work is sustainable. Absence of regulations in relation to absences from the State and the Covid PUP and the requirement to “Genuinely Seek Work” while in receipt of the Covid PUP
27. The Social Welfare (Covid-19) (Amendment) Act 2020 provides welcome clarity as to the legislative basis for the Covid PUP and as to the eligibility criteria which attach to the payment. However, FLAC would note concerns in relation to the absence of regulations to give effect to the new scheme.
28. Section 249(1) of the 2005 Act disentitles claimants to the Covid PUP in all circumstances except “where regulations otherwise provide”. No regulations have been made by the Minister to provide for entitlement to the payment during holidays or absences from the State for essential purposes.
29. Article 217(d) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (Statutory Instrument 142 of 2007) provides that claimants for Jobseeker’s Benefit and Jobseeker’s Benefit (Self-Employed) shall not be disentitled to their payments under Part 2 of the 2005 Act while they are “on holiday, in accordance with the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs, in respect of the first two weeks of any such absence in a calendar year”. The Department runs an administrative scheme in relation to claims for Jobseeker’s Allowance and Supplementary Welfare Allowance which allows claimants for those payments to remain in payment while on holidays to the same conditions (however, as noted above, there does not appear to be a legislative basis for applying such strict “holiday rules” in respect of those payments which are not subject to section 249(1) of the 2005 Act).
30. In addressing the Dáil on 29 July 2020, the Minister for Social Protection stated:
 “As I am currently bringing legislation through the Oireachtas to put PUP on a statutory basis, I intend to sign regulations that will bring the PUP payment in line with Jobseeker’s. That will mean persons on PUP can travel to Green List countries and their payment will not be impacted. As with Jobseeker’s, persons travelling to countries outside the Green List can only do so for essential reasons.”

The Minister has yet to sign any such regulations and as a result it does not appear that the Covid PUP is payable to claimants during any absences from the State regardless of the reason for such travel or however short its duration.

31. FLAC has further concerns in relation to the absence of regulations giving effect to the requirement to “genuinely seek work” while in receipt of the Covid PUP. Section 68L(1) of the 2005 Act (as amended by the 2020 Act) provides that, in order to be eligible for the Covid PUP, a person must be “genuinely seeking, but is unable to obtain, employment suitable for him or her having regard to his or her age, physique, education, normal occupation, place of residence and family circumstances”. Further, section 68L3 of the 2005 Act provides that a person is disentitled to the payment if he or she:

“(c) has refused an offer of suitable employment,

(d) has failed or neglected to avail himself or herself of any reasonable opportunity of obtaining suitable employment”

32. Unlike other payments where claimants are required to “genuinely seeking work”, the Minister has not introduced any regulations in relation to how claimants are to be assessed as “genuinely seeking work” whilst in receipt of the Covid PUP

Requirement to “Genuinely Seek Work” while temporarily laid-off

33. Further, FLAC has concerns about the imposition of a requirement for claimants to “genuinely seek work” whilst in receipt of the Covid PUP. Although, the 2020 Act those not propose to apply the condition retrospectively, the condition may have an adverse impact on many claimants eligibility for the payment following its enactment.

34. The “eligibility notice” for the Covid PUP on the application form for the payment has always stated (and still states) that the payment is available to those who have been “have been temporarily laid-off from work”. Many employees and owners of businesses which are currently closed but intend to reopen are currently in receipt of the Covid PUP. It seems unreasonable to expect such claimants to seek alternate work in circumstances where they have every expectation of resuming employment imminently. Further, employees who have been laid off may have to forego statutory redundancy payments from their original employer if they take up other employment elsewhere. The right of an employee to pro-actively claim a redundancy lump sum where they have been on lay-off for four or more continuous weeks was temporarily removed for the duration of the Covid crisis by section 29 of the Emergency Measures in the Public Interest (Covid 19) Act 2020. Thus, if such a person did find another job because, they would have to forego all statutory redundancy as well as minimum notice entitlements. Further, those who have no access to child care services due to the pandemic may be unable to seek work while in receipt of the Covid PUP and their entitlement to same may therefore be prejudiced.

Conclusion

35. As already noted, many of the issues which arise in the context of the Covid PUP were exacerbated by the absence of clarity as to eligibility criteria for the scheme and its legal basis. Unlike the enhanced Illness Benefit scheme introduced by the Department at the onset of the Covid-19 pandemic, the Covid PUP scheme was only belatedly provided with a clear legislative basis. While the 2020 Act purports that the payment was made under section 202 of the 2005 Act between 13 March 2020 and 5 August 2020, this proposition does not stand up to legal scrutiny. Further, section 202 of the 2005 Act does not provide a legal basis for the additional eligibility criteria for the scheme the Department sought to retroactively impose during that period.

36. It should also be noted that in introducing social welfare legislation and regulations in response to the Covid-19 pandemic, the Department remains under a duty, pursuant to section 42 of the Irish Human Rights and Equality Act 2014, to consider the human rights and

equality impact of their policies. It is notable in this regard that the Department's amended "holiday rules" in respect of social welfare payments, including the Covid PUP, may have a disproportionate impact on migrant workers who are entitled to such payments. Further, the imposition of a requirement to "genuinely seek work" while in receipt of the Covid PUP may disproportionately impact families who presently have limited access to child care services. Finally, it should be noted that during the period 13 March 2020 to 5 August 2020, those in Direct Provision had no access to the Covid PUP.

Recommendations

- *The Department of Social Protection should review the activities of Social Welfare Inspectors at ports and airports and ensure any such activities are carried out in a manner compliant with the significant restrictions on their powers in such settings under the 2005 Act. The Department must also ensure that any person who provide information to Social Welfare Inspectors in such settings are subject to fair procedures which respect their rights to natural and constitutional justice.*
- *The Department should review its administrative "Holiday Rules" for all payments and ensure that the rules applied in respect of each payment are reflective of the conditions in respect of absences from the State arising from primary legislation and not more restrictive. Any such review should include a review of Departmental Circular 35/20 including the policy contained therein to the effect that persons cannot be considered to be "genuinely seeking work" during periods when they are advised to self-isolate.*
- *The Department should review all claims for social welfare payments which were suspended on foot of airport checks with a view to ascertaining whether the checks were carried out lawfully, whether any suspension arising from the checks was allowed under primary legislation in relation to the relevant payment and whether the claimants subject to such checks were afforded fair procedures or given any notice before a suspension was put in place. The Department should lift any suspensions which were imposed arising from unlawful airport checks or which were imposed in circumstances where the relevant primary legislation did not allow for a suspension on the basis of an absence from the State alone. Further claimants subject to suspensions under such circumstances should be awarded back payments for the period of any unlawful suspension.*
- *The Minister for Employment Affairs and Social Protection should urgently introduce regulations allowing claimants of the Covid PUP to take holidays/leave the State, in a likewise manner to claimants for Jobseeker's Benefit.*
- *The Department should review the imposition of a requirement to "genuinely seek work" while in receipt of the Covid PUP. At the very least, regulations should be introduced setting out how this criteria is to be applied to claimants for the payment which take into account the fact that many claimants have limited access to childcare and, further, that many claimants for the payment are temporarily laid-off and have every expectation of resuming their previous employment or self-employment.*
- *FLAC recommends that in the event that in the event of a resurgence of Covid-19 or in the event of another similar major occurrence requiring the introduction of emergency social welfare measures that any such measures are introduced by way of primary legislation so as to provide a clear legislative basis for any such measures and to provide clarity as to who is eligible to avail of any new social welfare scheme. Further, in introducing any such emergency measures the Department should be cognisant of*

its duty, pursuant to section 42 of the Irish Human Rights and Equality Act 2014, to consider the human rights and equality impact of their policies.

3. Employment law

FLAC has seen a steady increase in employment law over the last few years but there has been a definite jump since the pandemic. Our information line is receiving calls from distressed people with urgent complex queries on employment law. Between March 2020 and August 2020, employment law queries increased by 58.7 per cent compared to same period in 2019. For the first time at the end of May employment law queries were the top queries on our phone line overtaking Family law for the first time in FLAC history. (This is not in any not to in any way take away from the seriousness and urgency of the issues arising in family law queries which have increased by 18.1 in the period between March to August 2020).

The queries include people who are being forced back to work with no childcare or who feel it is unsafe for them to return to work, queries from employees who have been told to come back by a specified day or to resign. Some callers have a disability which may come within the risk categories and are concerned that there is insufficient Health and Safety precautions been taken. Some callers are concerned that if they go into work they will be putting a child with a disability or a cocooning parent at risk when they return home.

They may be reluctant or unable to use public transport and may not have a car. Other queries concern employees who wished to take annual leave to take care of their children during the pandemic and employees who were being required to take annual leave during the pandemic

Over the past six months the range and number of employment related queries received on FLAC's Telephone Information and Referral line and in FLAC's legal advice clinics arising in the context of the Covid crisis illustrates the need for dedicated services to assist employees with often very difficult queries, a review of existing legislative standards and a potential programme of law reform in the area of employment rights.

Advice for employees affected

It is apparent to FLAC that the system of access to information/advice/advocacy legal representation/assistance on employment rights issues in Ireland requires review and improvement. The crisis has been marked by the absence of any State service to assist employees with advice to deal with some very specific queries, particularly for employee who are not members of trade unions and who do not have access to legal advice.

There are many websites where information on rights and entitlements can be sourced and these are of course helpful, but in a crisis situation where people are feeling deeply insecure about their jobs and where there is unfortunately so much scope for exploitation, people seek more than information. They want to talk about their personal situation, the application of the law to their particular circumstances, how their employer is treating them, what can and what should be done about it and how it will work out if they take a particular course of action. Many of these questions are of course very difficult to answer, but it is the difficult things and the hard questions that people seek answers to in a crisis, and you won't find these on a website.

Enforcement of employment rights

We must also look further down the line to the scenario where the fall out of Covid results in significant numbers of people seeking a remedy for the alleged breach of their employment rights, particularly around dismissal on grounds of redundancy. In many workplaces, the difficult decisions have yet to be made and in many others, we have encountered significant short changing of employee's rights in decisions affecting their livelihoods.

As FLAC has also frequently stated in the past, civil legal aid is simply not available for employment related complaints before the Workplace Relations Commission and the Labour Court and this has an adverse impact on both the bringing of complaints and their outcomes. In turn, the remedies available and provided to those whose complaints are upheld does not always adequately reflect the gravity of the conduct of the employer or improve outcomes for those who are struggling on low incomes.

Improvements to legislation

The particular features of the Covid-19 crisis has also shone a light on some aspects of current employment legislation and practice that are unclear and are in need of review and amendment. Some examples here include:

Issues concerning lay-off

Lay-off is provided for under the terms of the redundancy payments acts but there is still a question over whether an employer has a legal right under the legislation to put an employee on lay-off and, if so, whether the employer has to first substantiate his/her decision.

Notable also here is the absence of a legal obligation on employers to use a mandatory procedure in writing to place employees on lay-off from their jobs and to use a specific written procedure to notify employees that their lay-off was coming to an end and of the date when they would be expected to return to work. Thus, for example, many employers have ignored the RP9 form recommended for lay-off purposes with the result that many laid off employees had no documentation or written proof of the date of lay-off. This has resulted in instances where some employees have been in a 'lay-off limbo', unsure when they will be called back to work or even if they will ever be called back. We have had callers who are dismayed that some of their colleagues have returned to work but they have not. We have had callers who have reported that they have been replaced by new employees.

An ironic twist here perhaps is that the right of an employee who has been '*laid off or kept on short-time for four or more consecutive weeks or, within a period of thirteen weeks, for a series of six or more weeks*' to claim a redundancy lump sum was temporarily removed for the duration of the Covid crisis by virtue of s.29 of the Emergency Measures in the Public Interest (Covid 19) Act 2020 (March 27th). It provided that:

29. The [Redundancy Payments Act 1967](#) is amended by the insertion of the following section after section 12:

12A. (1) Section 12 shall not have effect during the emergency period in respect of an employee who has been laid off or kept on short-time due to the effects of measures required to be taken by his or her employer in order to comply with, or as a consequence of, Government policy to prevent, limit, minimise or slow the spread of infection of Covid-19.

The fact that an employee cannot pro-actively claim a redundancy lump sum (even if s/he has found another job, which happened with at least one of our callers) but must wait, in some cases interminably, for the return to work, is deeply unfair. Although the PUP payment of €350 per week may have mitigated this somewhat, it does not take away from the fact that many employees have suffered a significant loss of earnings while on lay off.

Although the majority of employers have done the best they could for their staff in difficult circumstances, it would not have been difficult to forecast that some employers would take advantage of the Covid crisis to make some changes that would ordinarily have been considered

unacceptable from an employment rights perspective. Safeguards could and should have been put in place to mitigate against this.

Requests for and impositions of annual leave

There is ambiguity concerning how requests for statutory annual leave from employers by employees and impositions of annual leave by employers on employees are to be decided and by whom and these concerns have been amplified during Covid.

According to Section 20 of the Organisation of Working Time Act, it is the employer's decision, having regard to work requirements, when an employee can take annual leave. However, there are some important restrictions to this right. The employer must take into account the employee's '*need to reconcile work and family responsibilities*' and '*the opportunities for rest and recreation available to the employee*'. In practice it can be argued that this means that annual leave should not be imposed on an employee at a time that is completely unsuitable. However, in an emergency situation like Covid 19, an employer may argue that its work requirements are a matter of priority.

A further important obligation on the employer under the section is to consult with the employee or his/her trade union at least one month before the first day of the leave is due to begin. An employee who works 1365 hours or more in a leave year is entitled to at least four weeks annual leave or 1.33 days annual leave for each month where at least 117 hours is worked. Once the leave has been accrued through the service of the employee and one month's notice has been given, the employer can request employees to take annual leave. However, the Covid 19 crisis has seen some employers request employees to take annual leave that has not yet been earned through the employee's service. Some employees were not happy about this as they felt it would deprive them of future entitlements to annual leave at a time when it may be most needed.

The Covid crisis would suggest that Section 20 of the OWT Act 1997 should be subject to a review, with the purpose of framing a section that would at least attempt to put in place rules that are more precise in terms of reconciling what might be considered to be the competing rights of employers and employees. A helpful reform perhaps would be making it mandatory for employers to have a written policy on annual leave with a written request mechanism on both sides and rights to adequate notice, consultation, appeal and associated measures.

Parental leave/Childcare issues

Child care issues have clearly loomed large for many employers and employees during the lockdown and while the return to school may help with some of these difficulties, the needs of pre-school children and children requiring care after school still have to be met. The difficult financial position that the childcare sector finds itself in and the cost of childcare for parents has arguably exacerbated these difficulties.

Apart from annual leave, Parental Leave has been used to solve of these difficulties but it is a form of leave taken at the employee's expense and there are notice requirements for employees to provide and postponement rights for employers, all of which can limit its value. Reflecting this, we have received queries to our phone line where an employer is insisting that an employee present for work as set out in her/his contract of employment but where a parent simply cannot do so due to childcare obligations and where the dismissal of the employee is threatened if s/he does not comply with the instruction.

At present, it would appear that there is no explicit legal protection is available to employees who cannot attend at work due to a lack of childcare provision, although it has been suggested that employees might conceivably be protected by the 'family status' ground in the employment equality legislation, though the extent of this protection has not been tested.

Though all of this is far from clear cut, the Covid crisis has underlined that there is a need to look at providing more certainty and clarity in this area. For example, there may be potential for extending the paid *force majeure* leave rights of employees under the parental leave legislation to cover emergency situations not solely consisting of illness or injury but otherwise clearly beyond the employee's control, such as what is perhaps the ultimate *force majeure* event - a global pandemic.

Issues of health and safety at work

The return to work, particularly for non-office workers, has led to a particular focus on employee health and safety and the exposure of many employees to the virus, for example in the meat and other food processing operations, has been the subject of much media attention recently. Similarly, the position of healthcare workers in both residential and hospital settings was and continues to be of much concern as numbers of cases resurge.

In terms of the work of the Health and Safety Authority (HSA), there has been some concern expressed about two particular issues – the resources available to the HSA at a time when their workload has substantially increased and the reputed practice of the pre-announcement of inspections of workplaces. Much emphasis is placed in the legislation on health and safety on the necessity for co-operation between employers and employees in ensuring safe workplaces and this is a good thing. However, it would be naïve to believe that there are not some employers taking short cuts on health and safety matters for financial reasons and decisive enforcement action is required to counteract this.

What legal rights therefore do employees who believe that their workplace may currently be a risk to their health and safety have to object to attending for work? On this question, as far as we can see, there has been little public discussion or information. It is perhaps not that widely publicised for example that under s.27 of the Safety, Health and Welfare at Work Act 2005, an employee who has raised a health and safety concern at work (as defined) and has been penalised (as defined) by his/her employer is entitled to make a complaint to the Workplace Relations Commission and obtain appropriate compensation. However, it is clearly the case that this is a difficult thing for any employee to take on and many employees will be afraid of the potential repercussions.

Strengthening this section by providing specifically for a reinstatement remedy and even an injunction mechanism should be considered, in addition to broadening the range of health and safety matters covered by the section to specifically include raising Covid or pandemic concerns. Ultimately, this must be accompanied by swift and robust enforcement of health and safety laws by the State.

Evictions and Part 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020

Part 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (the “2020 Act”) made provision for the suspension of the normal operation of the Residential Tenancies Act 2004 (the “2004 Act”) with regard to the termination of tenancies and increases in rent. Part 2 also contained provisions purporting to suspend other legislative measures which could have been used to effect an eviction of tenants who did not fall within the application of the 2004 Act. It is those latter provisions that this submission addresses.

While the 2004 Act offers some legal protection to tenants to whom it applies, many individuals who approach FLAC have housing situations outside of its scope. This may be because, *inter alia*, they are persons who are homeless or at risk of homelessness requiring emergency accommodation or social housing support or because they are members of the Traveller community who wish to reside in culturally appropriate accommodation the provision of which by local authorities was authorised by the Housing (Traveller Accommodation) Act 1998 (the “1998 Act”).

Therefore, in assessing the government's response to the crisis caused by covid-19, what is effectively being considered is the success of a legislative effort to sustain a system already in crisis. It is FLAC's submission that the failures of successive governments to address a worsening housing and homelessness crisis and to ensure the provision of culturally appropriate accommodation to members of the Traveller community must be factored into any consideration of the success or failure of the State's legislative response to covid-19 and the opportunity used to reconsider and reimagine the State's approach to these issues.

It should also be remembered that in relation to evictions, the European Committee on Social Rights⁴ found that Ireland violated the Charter by failing to provide safe and adequate accommodation to Travellers and also found that there were violations of Article 16 of the Charter on the grounds that Part II A of the Criminal Justice (Public Order) Act 1994 and section 10 of the Housing Act 1992 provide inadequate safeguards for Travellers threatened with eviction. As these findings relate specifically to accommodation provision and protection from arbitrary eviction of Travellers Section 5(7) of the 2020 Act
Section 5(7) of the 2020 Act – which was deleted by section 23 of the Residential Tenancies and Valuation Act 2020 - made provision for protecting tenancies outside of the scope of the 2004 Act. It provided:

(7) (a) Notwithstanding any of the provisions in this section, all proposed evictions in all tenancies in the State, including those not covered by the Act of 2004, are prohibited during the operation of the Emergency Measures in the Public Interest (Covid-19) Act 2020.

(b) For the avoidance of doubt, this section applies to all Local Authority and Approved Housing body dwellings.

(c) For the avoidance of doubt, all Travellers who are currently resident in any location should not during this crisis be evicted from that location except where movement is required to ameliorate hardship and provide protection and subject to consultation with the Travellers involved.

On its face section 5(7) extended the prohibition on evictions under the 2004 Act to all tenancies, as well as prohibiting the forced movement of members of the Traveller community. However, it is FLAC's submission that the section lacked clarity and suffered from ambiguities which hindered its effectiveness.

Referable periods

One such ambiguity was the referable period during which section 5(7) was intended to apply. The earlier parts of section 5, which related to the 2004 Act, were stated to apply during "*the emergency period*". The emergency period was defined in section 3 of the 2020 Act as being for a period of 3 months from commencement and was capable of being extended by the Minister for Housing, Planning and Local Government after consultation with the Minister for Health and the consent of the Minister for Public Expenditure and Reform. The emergency period was last extended by the Emergency Measures in the Public Interest (Covid-19) Act 2020 (Section 4) (No. 2) Order 2020 until 1 August 2020. As the emergency period has now expired, the prohibition on notices of termination and rent increases under the 2004 Act, have also lapsed.

4 ERRC v Ireland; Complaint 100/2013. Decision on the Merits published 16 May 2016

By distinction, the application of section 5(7)(a) and section 5(7)(c) was not tied to the emergency period.

Section 5(7)(a), which prohibited “*all proposed evictions*” was stated to apply “*during the operation of the Emergency Measures in the Public Interest (Covid-*

19) Act 2020” and section 5(7)(c) was stated to apply “*during this crisis*”.

Although the referable period in section 5(7)(a) was capable of being understood by reference to an objective standard, *i.e.*, the currency of the 2020 Act, it appeared to create a conflict with the earlier provisions of section 5 which were expressed to be determined according to the emergency period. This is because section 5(7)(a) was stated to apply to “*all proposed evictions in all tenancies*”. Accordingly, this would bring in tenancies under the 2004 Act. Although this ambiguity was resolved by the deletion of section 5(7) of the 2020 Act on the same day as the end of the emergency period, the interpretative conflict it created made the provision of clear legal advice difficult.

The referable period for the application of section 5(7)(c) of “*during the crisis*” suffered principally from a failure to define “*the crisis*”. It was not clear whether the crisis was commensurate to the emergency period or whether it was longer or shorter. As with section 5(7)(a) this issue was largely resolved by the deletion of section 5(7) on the same day as the end of the emergency period but it created similar difficulties in providing clear legal advice.

Interpretative issues/ failure to define terms

Further ambiguities arose in determining the relationship between section 5(7)(a) and section 5(7)(c) and in interpreting the wording of section 5(7)(c).

Section 5(7)(a) provided for a prohibition on “*all proposed evictions in all tenancies in the State*”.

Section 5(7)(c) appeared to either clarify or add to the prohibition insofar as it concerned members of the Traveller community by providing “*all Travellers who are currently resident in any location should not during this crisis be evicted*”.

The extent to which these provisions were intended to be read together or separately was unclear.

Section 5(7)(c) began with the words “*for the avoidance of doubt*” which suggested that it was clarifying what had been stated already, however, where section 5(7)(a) limited its prohibition on evictions to “*tenancies*”, section 5(7)(c) appeared to extend the prohibition on evictions to Travellers resident in “*any*” location. Thus it appeared intended to apply to Travellers pursuing a nomadic way of life who were resident on the roadside but not what one would typically describe as a “*tenancy*”.

A further ambiguity arose in interpreting the meaning of section 5(7)(c) which was said to apply to “*all Travellers who are currently resident in any location*” (emphasis added). On one interpretation, it might suggest that as a precondition to accessing the protection against eviction, Travellers must have been in-situ at the date of the commencement of the 2020 Act. However, a separate interpretation of s.5(7)(c) is that “*currently*” should not have been read as a point-in-time marker but should have been applied to cases as they arose. On such an interpretation, a local authority could not move to evict a Traveller family solely on the basis that they had taken up a new place of residence during the currency of the crisis.

In FLAC’s experience, local authorities continued to use legislative measures such as section 69 of the Roads Act 1993 and section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended) to require Travellers to move from a particular location despite an apparent prohibition on the eviction of Travellers in section 5(7)(c). It is submitted that the interpretative ambiguities in section 5(7) allowed for this eventuality.

Conclusions

FLAC submits that section 5(7) of the 2020 Act contained numerous interpretative ambiguities that deprived those who ostensibly should have been protected by its provisions of any means to resist an eviction or seek a remedy.

Recommendations

- FLAC recommends that in the event that similar provisions are required due to a resurgence of covid-19 or in the event of another similar, major occurrence requiring the limitation of movement and a reduction in economic activity, that the State should put in place comprehensive protections from evictions for the entire population and not just those covered by the 2004 Act. Any such protections must be precise, unambiguous and inclusive.
4. The legislative framework governing evictions in any event need to be reviewed in the light of the decision of the European Committee of Social Rights

Debt

The fallout from Covid-19 and the ensuing recession is unfortunately likely to worsen the problem of over-indebtedness in Ireland. The position of a number of people whose financial difficulties arising from the last recession have never been resolved, may be exacerbated. To these may be added others who were just keeping their heads above water but who may now find themselves in a position of personal insolvency following loss of employment or business failure, particularly when payment breaks, moratoria on evictions, income support measures and associated strategies are reduced or even phased out.

It is notable that the proposed measures relating to debt announced in the recent programme for government do not seem to anticipate this threat, as they largely reflect existing policy that has yet to be acted upon rather than any new initiatives. Thus they may lack the urgency required to effectively deal with a new set of debt problems that may arise in the post-Covid landscape. These measures were to:

- Introduce the necessary reforms to our personal insolvency legislation and ensure that sufficient supports are in place for mortgage holders with repayment difficulties.
- Assess the Code of Conduct on Mortgage Arrears, including the available suite of alternative repayment arrangements, and ensure it has full legal effect.
- Strengthen the Mortgage to Rent Scheme and ensure that it is helping those who need it.

Payment breaks

Recent research conducted by the Central Bank⁵ provides some helpful detail on payment breaks. *'91,555 payment breaks have been approved for household borrowers, representing €16 billion of loans. Almost all of household loans fall into either mortgages or consumer loans. In this context, the number of household payment breaks are split almost evenly across mortgage and consumer lending.*

In terms of value, mortgages account for over 90 per cent of household payment breaks at €14.5 billion, representing over 10 per cent of the value of outstanding mortgages (Table 1). Focussing on

5 Central Bank of Ireland (2020). COVID-19 Payment Breaks – who has needed them? A paper by Allan Kearns, Andrew Campbell, David Duignan, Darren Greaney and Grace McDonnell, July 2020. Dublin: Central Bank of Ireland. See: <https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/covid-19-payment-breaks-who-has-needed-them>

Irish borrowers, 9.6 per cent of the total value of mortgages have approved payment breaks. Within this group, approved payment breaks for households with principal dwelling mortgages (PDHs) represent 9.7 per cent of the value of outstanding mortgages. The equivalent ratio for buy-to-let (BTL) mortgages is marginally lower at 8.9 per cent.

Consumer loans account for almost half the number of approved household payment breaks but account for less than 10 per cent of the value at €1.3 billion. These payment breaks represent 6.6 per cent of loans to Irish resident consumers (i.e., calculated for Irish Retail Banks and Credit Unions only).'

This Paper refers to payment breaks as the need to achieve the provision of credit to solvent, but cash-strapped borrowers. Thus, it is conceivable that the payment breaks captured in the Central Bank's research are intended to cover temporary financial difficulties over a limited period that do not threaten the solvency of the relevant borrowers in the medium to long term. Thus, what may be suggested is that these borrowers were solvent and broadly speaking did not have financial difficulties before the pandemic occurred.

Turning to the payment breaks themselves, their scale is quite significant over a short period of approximately three months. Even though the amount involved in respect of secured loans dwarfs that of unsecured debt by a factor of nine to one, it is also notable that half of the breaks in number concern unsecured loans.

Approved payment breaks for households with principal dwelling mortgages (PDHs) represent 9.7 per cent of the value of outstanding mortgages. Despite the dominance of mortgage difficulties in the narrative around payment breaks over the course of the pandemic and in the general discourse around debt over the last decade, it is also notable that close to 100,000 arrangements have been put in place in respect of loans representing close to 7% of unsecured (or what the research refers to as consumer) loans issued by 'Irish Retail Banks and Credit Unions' only.

Existing debt cases

Apart from borrowers who have only recently run into difficulty and availed of payment breaks, we also know, in terms of both mortgages and unsecured debt obligations, that many borrowers have had alternative repayment arrangements in place that involve payments below the notional contractual amounts well before the problems posed by Covid began and many of these are clients of the Money Advice and Budgeting Service (MABS). It is not immediately clear how these payment arrangements have fared during Covid but there must be much concern about this. To add further context to these concerns, it is clear that even before the beginning of the Covid crisis, payment arrangements put in place on a significant number of restructures were not being maintained. For example, in the area of family home mortgage arrears alone, the CBI suggests in its latest available Q.1 2020 report that 81,255 such mortgages are classified as restructured, with 17,492 being classified as still being in arrears. Approximately 90% of these restructures are long term in nature and the failure rate in terms of compliance with the terms of these arrangements is close to 11,000 (or about 15% of the total number restructured).

The key question here is, quite apart from determining therefore who has developed a new debt problem arising from the Covid 19 crisis, whose debt problems have worsened as a result of it, and to what degree?

Covid financial supports

Our understanding is that the income supports put in place by the government, principally in the form of the Temporary Covid 19 Wage Subsidy Scheme and the Covid Pandemic Unemployment (PUP) payment, are in place for a limited period. The former was replaced by a new Employment Wage Subsidy Scheme (EWSS) at the end of August, 2020 which is (currently) due to run until April 2021.⁶ Under this scheme, employers and new firms in sectors impacted by COVID-19 whose

turnover has fallen by 30% receive a flat-rate subsidy of up to €203 per week per employee, including seasonal staff and new employees. Thus, it is in principle substantially less favourable than the current scheme. Insofar as it concerns the PUP payment, new applications will not be accepted after September 2020, and the rates will be further adjusted on February 1st and April 1st 2021 respectively.⁷

At that point, many difficult decisions related to the ceasing of the operation of businesses or making employees compulsorily redundant will likely be made, in addition to cases where the decision has already taken place. Many borrowers will fall victim for a second time to recessionary events beyond their control and will have financial obligations in train that they simply will not be able to meet. Thus, many payment breaks will not be made up and many existing payment arrangements short of the original contractual obligation may fail. The implications for the legal system and the personal insolvency regime are considerable. What will be the response of wider credit industry to this and what approach will the regulator – the Central Bank of Ireland – take to it? What is evolving government policy on what has all the appearance of a new consumer debt crisis? Insofar as it concerns plans disclosed in the public domain, it is hard to know at present.

The last major consumer debt crisis in this country eventually led to the adoption of the Central Bank's Code of Conduct on Mortgage Arrears (CCMA), effective from January 1st 2011 (and updated in 2013), with its introduction of a compulsory Mortgage Arrears Resolution Process (MARP) that was in our view procedurally flawed. This was eventually followed by a much delayed Personal Insolvency Act 2012 (effective from autumn 2013) which required significant amendment in late 2015 to try to boost arrangement numbers, and whose review is overdue since 2017.

Two key lessons may be learned in our recent history of handling over- indebtedness in Ireland. We have a tendency to be indecisive and act too slowly and we sometimes fail to understand that all the debts of the person in difficulty – secured and unsecured - must be considered together in the search for a resolution. The framework of information, advocacy, legal advice and legal aid for debtors also needs to be reviewed. A Covid debt code to deal with legacy mortgage arrears, new mortgage arrears and unsecured debt needs to be considered. Access to justice, access to legal aid and access to the Courts and tribunals

FLAC has a longstanding commitment to promote human rights and equal access to justice. Access to justice is a fundamental human right. ⁸ Access to justice is both a process and a goal, and is crucial for individuals seeking to benefit from the large range of statutory rights which are adjudicated upon by the Courts and quasi-judicial bodies like the Workplace Relations Commission and the Social welfare appeals office. While it has no single precise definition, core elements of access to justice include effective access to information, advice, legal aid, access to the courts, access to an effective hearing, access to a decision in accordance with substantive law, and access to an effective remedy.

Socially excluded groups within the general population are more likely to suffer justiciable problems (meaning problems for which there is a potential legal remedy within a civil and/or criminal justice framework) ⁹ and the lack of effective and accessible mechanisms for resolving legal disputes prevents individuals from protecting and asserting their rights. Unless the right of access to justice (in all spheres of law) is vindicated, the risk of social and economic exclusion particularly for marginalised or vulnerable communities is greatly increased.

6 See: <https://www.revenue.ie/en/corporate/communications/stimulus/employment-wage-subsidy-scheme.aspx>

7 See: <https://www.gov.ie/en/service/be74d3-covid-19-pandemic-unemployment-payment/>

FLAC's concern throughout this unprecedented pandemic has been to support those who are most vulnerable to access legal advice and information. In addition to large scale illnesses and loss of life, COVID-19 has impacted upon every aspect of people's lives, including their ability to access justice. Individuals and communities that are marginalised, vulnerable and already experiencing disadvantage are impacted negatively when faced with precarious employment or unforeseen financial stresses. This can be compounded when living in poor or insecure housing conditions, or in situations of abuse or domestic violence.

Access to justice can play a major role in restoring social cohesion and confidence in the institutions of the State. There is a need for rapid action to ensure that those who are most at risk and have the least access to legal support, are able to access the forums where their legal issues may be addressed. Access to justice should be positioned alongside provision of access to healthcare, housing, social welfare supports, debt resolution options, and employment support in government responses. The need for this recognition in the context of COVID-19 is even more acute. Failing to do so further embeds inequalities and there is a need to ensure that individuals are not further disadvantaged as a result of COVID-19.

Legal Aid and COVID-19.

During Covid 19 Legal Aid Board Law Centres, moved to remote operation for some of their work and are now in the process of reopening. The Legal Aid Board continued to provide some services to individuals throughout the pandemic using phone consultations. The Legal Aid Board have said that they expect a surge in demand for their services once normal practices resume in the Courts.¹⁰ There is currently no way of predicting the extent of demand that the Board may be faced with in applications for Civil Legal Aid once the Courts resume normal practice.

Prior to the pandemic, the Legal Aid Board Services were overstretched beyond capacity, with waiting lists of over 6 months in some places, according to the most up to date figures available from June 2020. In one rural law centre, ten of the 47 people on the waiting list for a first consultation were deemed to be a "priority."¹¹

FLAC has raised the matter of insufficient budgetary allocations for the Legal Aid Board before with members of the Oireachtas and have asked for a root and branch review of the matter of civil legal aid system and increased funding commensurate with required levels to provide the service that is needed.

⁸ Access to justice is recognised as such under a range of regional and international instruments including the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the International Covenant on Civil and Political Rights.

⁹ A Buck, NJ Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice problems among Vulnerable Groups' (2005) 39 Journal of Social Policy and Administration, 302-320.

¹⁰ Meeting of External Consultative Panel to the Legal Aid Board 15.07.20 (Minutes not yet published).

¹¹ Legal Aid Board, Statistics on Waiting Times, June 2020 Accessible here: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/waiting-times/june%202020.pdf>

The many complex legal issues that FLAC encounters in its phone line and phone legal advice clinics are largely excluded from the remit of the Legal Aid Board. There is no legal aid available for claims before the Workplace Relations Commission and Social Welfare Appeals office no matter how complex the issue may be and how vulnerable the claimant may be. In addition there is a perception that legal aid is not available for housing issues.

Legal aid is also subject to a very strict means test. It is likely that there will be many people who find themselves in the position now that although their sole income may come from a COVID-19 social protection payment, the manner in which their income is assessed could mean that even if they do meet the means threshold, they will have to pay a significant amount in order to access legal advice or information from a Legal Aid Board solicitor.

At a minimum, FLAC has previously called for the financial eligibility criteria to be measured annually against national poverty proofing standards and for the publication of the underlying analysis by the Department of Justice and Equality. There are no provisions to index link the allowance or income criteria or to provide for increases in the cost of living or in the cost of legal services. Indeed, the new threshold and allowance figures for means test qualification is in drastic need of review.

The Joint Oireachtas Committee on Justice and Equality in its review of the family law system in 2019 recommended a review of the legal aid system. Given the impact of COVID-19 this is more important now than ever before.

Access to the courts

Access to justice also involves access to the courts and tribunals.

During COVID-19 the Courts remained open for urgent business only, and the majority of claims before the Courts and Workplace Relations Commission and Social Welfare Appeals office were adjourned. The Social Welfare Appeals Tribunal is currently not holding oral hearings at all for those who may wish to appeal a decision of the Department of Employment Affairs, and while there are still appeals processes in place for such cases, the lack of access to a hearing is a hindrance to access to justice.

While FLAC acknowledges the challenges posed by the restrictions in place in response to the Covid-19 crisis, FLAC submits that the Courts and quasi-judicial bodies should assess whether – and, if so, when – it is possible to continue hearings safely within the existing physical infrastructure. In this regard it is noted that the Courts are continuing to operate on an albeit limited basis so, subject to appropriate safeguards being in place. It may well be possible for other quasi-judicial bodies to continue to operate safely with face to face hearings, at least as the restrictions are eased in the coming months.

While FLAC welcomes the enactments of the [Civil Law and Criminal Law \(Miscellaneous Provisions\) Act 2020 which provides for video links and remote hearings in civil and criminal proceedings, these will only be suitable in certain types of cases. In addition older people, persons for whom English is not a first language, persons with physical or intellectual disability, homeless people and the more marginalised and disadvantaged are all less likely to have access to these facilities. There would be a very significant difficulty for the Courts and quasi-judicial bodies in ensuring equal access to justice and tackling the existing digital divide in these circumstances](#)

The Courts Services and the Legal Aid Board are an essential part of the administration of justice and the rule of law and need to be resourced accordingly and priority needs to be given to ensuring that they continue to function as effectively as possible during Covid 19. The ability to respond flexibly and quickly during the pandemic has been important, however it is clear now that there will be difficulties going forward as we begin to live with the virus and continue to have the same, if

not more, needs. In addition, legal service providers including the Courts Service, and quasi-judicial bodies like the Workplace Relations Commission will be faced with increased waiting lists and workloads as they begin to address the non-emergency cases that were postponed for the duration of the pandemic.

FLAC is very concerned at the difficulties vulnerable claimants will face in accessing legal aid and this will be compounded by the inevitable growing delays in the Courts and Tribunal system.

Recommendations

- *Access to justice should be a core consideration of the work of this committee*
- *FLAC has consistently campaigned for a root and branch review of the entire civil legal aid system, and specifically requests that the Oireachtas Committee examine specifically the legal needs of vulnerable and individual groups as they relate to employment issues, housing, family law, and debt issues; and how these may be negatively impacted by COVID-19*
- *The Courts Services as a key part of the administration of Justice need to be resourced adequately to deal with the growing delays which will be greatly exacerbated as a result of Covid 19.*
- *FLAC recommends that the Committee examine the challenges for ensuring accessibility of legal and justice services beyond the immediate period of COVID-19 and ensure that the protection of fundamental rights, and procedural rights, are guaranteed.*
- *FLAC recommends that increased support is allocated to provision of basic legal services, including the Legal Aid Board and other service providers who are providing services to those engaging with the justice system.*
- *FLAC recommends that technology is maximised to facilitate access to legal services in a manner that increases access but does not exclude participation by those who do not have the ability to utilise new methods (whether that is due to disadvantage of literacy, geographic location, lack of service provision etc.).*

Appendix 1

<http://ennhri.org/wp-content/uploads/2020/04/ENNHRI-Statement-on-COVID-19-23-April-2020.pdf>

Now is the time for solidarity on human rights. The need for human rights in COVID-19 responses in Europe

23 April 2020

The novel coronavirus disease (COVID-19) pandemic has put states across the world to a test like none before, and not least in Europe. As the outbreak rapidly develops, governments have taken broad and strict measures to reduce the virus' spread, prevent a breakdown of healthcare systems and save lives. In these responses, all human rights must be kept at the heart, as they can help us in overcoming this public health challenge while protecting our dignity and democratic freedoms.

We, National Human Rights Institutions (NHRIs) in Europe, have monitored our states' reactions since the pandemic began, while advising our governments and parliaments on human rights standards and informing the public about their rights during this crisis. We will continue doing so, individually and collectively, fulfilling our mandate under the UN Paris Principles to promote and protect human rights.

All states in Europe, whether they are members of the Council of Europe or European Union, have committed to upholding human rights, democracy and the rule of law, including under the European Convention on Human Rights, EU Charter of Fundamental Rights and UN treaties. We are calling for solidarity at all levels to ensure that these standards are respected, helping us see this pandemic through while staying true to our democratic values.

In particular, we underline the following principles.

1. Human rights remain in force in a time of crisis

Human rights continue to apply, even when a state declares a state of emergency or a derogation from its human rights obligations. States can only derogate to the extent strictly required by the situation and must announce their intention to do so in a timely manner. The prohibition of torture and inhuman or degrading treatment, as well as the prohibition of discrimination, cannot be derogated from at all.

Measures must be legally-based, proportionate and time-limited

Measures must have a legal basis, be proportionate and be time-limited. Decisions should be continually re-evaluated with a rebalancing of the rights involved, especially since they have to be made with limited knowledge about the virus, including the conditions under which it can be lethal, the lack of therapies and vaccinations, and the scarcity of tests and protective gear. In this uncertain context, the longer restrictions on human rights are in place, the more negative impacts they have. States must consider that what is proportionate at the start of the pandemic may become disproportionate over time, and if this is the case, the measure should be mitigated or abolished.

2. Measures cannot have any discriminatory impacts

Government measures in response to COVID-19 must protect the rights of all people and cannot discriminate. The impacts of measures on the human rights of particular groups, including women, older people, people with disabilities, children, migrants, people seeking asylum and people living in poverty or homelessness, must be assessed beforehand. Should people belonging to such groups be disproportionately affected, mitigation measures need to be put in place. This is required by the prohibition of discrimination.

3. Situations of vulnerability must be addressed

While protecting everyone's human rights, states must particularly assess and address situations of vulnerability caused or exacerbated by its measures.

These can include: women and children facing violence at home due to curfews and overcrowding at shelters; homeless people unable to access an indoor place to stay; migrants unable to self-isolate due to limitations at reception centres; people in long-term care or hospitals suffering mental health problems due to visitation prohibitions; and children living in poverty unable to access online schooling or a space to learn.

4. Broad public debate is as important as ever

Since the COVID-19 pandemic and government responses deeply impact on all people and their human rights, broad public debate and consultation are essential. The state must fully ensure media freedoms and a safe space for civil society and human rights defenders to engage in their activities. These are means for the public to ensure that their governments make decisions that are in the interest of everyone, especially in this context of high uncertainty.

Also, measures should be clearly communicated in accessible ways to ensure that all people, including people with disabilities and ethnic and linguistic minorities, can participate in public debate.

5. Parliaments must hold governments to account

Given that all legislation and executive regulations must respect human rights, parliaments should regularly assess the human rights impacts of COVID-19 measures, including through appropriate powers of the opposition (in accordance with each state's constitutional structure) for effective parliamentary oversight. The parliament must not cede its responsibility to the government, and the government must not prevent parliament from fulfilling its legislative and supervisory roles.

6. Judicial independence must be protected

During a crisis, governments and parliaments should be particularly vigilant in protecting the independence of the judiciary so that courts can scrutinise laws, as well as their implementation, for human rights compliance. Fair procedures and the enforcement of judgements are also essential elements in this regard, helping to ensure that rights and freedoms are protected during the crisis.

7. Restrictions on democratic rights must be kept in check

If freedom of assembly limitations are put in place to contain COVID-19, a blanket ban must be speedily replaced by other measures that achieve this objective. If surveillance measures are installed to tackle further spread of COVID-19, they should respect the right to privacy of each individual.

Governments should avoid making decisions in highly-contested areas or calling elections, as long as such restrictions on democratic rights are in place. If elections must go ahead, parliaments should make sure that opposition parties have equal access to the people, that election laws are not amended (unless supported by the parliamentary opposition), and that voters can take part in elections in practice.

8. States should engage with their NHRIs

States should work with NHRIs in their efforts to combat COVID-19. As independent, pluralistic institutions mandated by the state, we monitor and provide credible advice on the human rights implications of state measures. We are well-placed to advise on the legality of human rights derogations due to our expertise in international human rights standards. We also handle individuals' complaints and work with civil society and human rights defenders to raise the voices of all affected people, including the most vulnerable, such as by reporting to national and international bodies.

A call for solidarity

Respect for human rights during the COVID-19 pandemic calls for solidarity at all levels. Within states, measures to combat the pandemic should be motivated by the conviction of all people to contribute to preventing the virus' spread, while states must stand by those most at risk. As the pandemic knows no borders, states need to collaborate in their efforts, and the Council of Europe and European Union should mutually reinforce each other to help states align their actions with human rights.

This pandemic is a test for the commitment of states to human rights. It is a test for the Council of Europe as the conscience of Europe, and for the European Union on whether it is indeed a community based on common values and fundamental rights. As European NHRIs, we are committed to promoting and protecting human rights, democracy and the rule of law and stand ready to act in solidarity with all to advance human rights during this crisis and beyond.

ENNHRI is the European Network of National Human Rights Institutions. We bring together over 40 National Human Rights Institutions (NHRIs) across Europe to enhance the promotion and protection of human rights in the region. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.

Appendix 2

Re: Departmental Circular No. 35/20 and Entitlement to certain Social Welfare Payments while Abroad

Summary

The Department of Employment Affairs and Social Protection has adopted a policy, by way of a Departmental Circular, which purports to allow for the suspension of certain social welfare payments in circumstances where a claimant leaves the State.

While the legislation in relation to Jobseeker's Benefit has been amended in order to allow for the implementation of the said policy, these amendments do not apply to the other payments purportedly effected by the circular. The primary legislation in relation to Jobseeker's Allowance and Supplementary Welfare Allowance, allow claimants to remain in payment provided that they remain normally resident in the State. That primary legislation does not empower to Minister to make further regulations in relation to eligibility for the payment in circumstances where claimants are absent from the State. As a result, it appears that, in relation to Jobseeker's Allowance and Supplementary Welfare Allowance, the Department's policy is contrary to the Social Welfare Consolidation Act 2005. Any decision on behalf of the Department to suspend those payments where claimants, who are residents of Ireland, take holidays abroad would be open to challenge. Similarly, the eligibility criteria for the Covid Pandemic Unemployment Payment (an administrative scheme which is not grounded in primary legislation) makes no references to entitlement to the payment being suspended during absences from the State. As with JA and SWA, the relevant criteria for access to that payment is that the applicant be resident in the State.

The Department's policy also implies that those who have to self-isolate following their return from travel abroad are not entitled to payments where there is an obligation to be available for work during the self-isolation period. Firstly, no such obligation exists in the context of SWA and it is questionable whether such an obligation exists in relation to the Covid PUP. Secondly, it is doubtful that all social welfare claimants who have to self-isolate for a period can be automatically deemed to be unavailable for work or to be not genuinely seeking work.

Introduction - Circular 35/20

1. On 30 June 2020, the Department of Employment Affairs and Social Protection issued Circular 35/20 to its Divisional Staff and Branch Managers. The circular, entitled "Updated Holiday Procedures for JA/JB/JBSE, SWA and related Payments including Pandemic Unemployment Payment", took immediate effect and the "description", included below its title, reads as follows:

“This circular updates RDO Circular 71/10 and specifically suspends the provision of Article 217 of SI 142 of 2007 which allows customers to take two weeks holidays outside the State each year.”

2. The first section of the circular, entitled “Purpose”, provides a more detailed description of its intended effects:

“This circular is being issued to update current holiday application processes as set out in Circular 71/10 and 13/16 for JA/JB/JBSE, SWA and related payments including the Pandemic Unemployment Payment.

Current Covid-19 public health advice and foreign travel regulations require that anyone coming into Ireland, apart from Northern Ireland, are required to self-isolate for 14 days. This means that any jobseeker who travels abroad will be unable to fulfil the GSW and availability requirements for a jobseekers payment for the period abroad and the self-isolation period on their return i.e. for up to four weeks.

On a temporary basis and as a consequence of the continuing COVID-19 pandemic the terms of the Circulars 71/10 and 13/16 have been suspended for all travel abroad and consequently at present will not apply to those wishing to take holidays outside the island of Ireland. Please note that Article 217 of SI 142 of 2007 is being amended.

In time, if the self-isolation requirements are lifted for people arriving into Ireland from specific countries, then the suspension of the Holiday application procedures will be reviewed and further notification will issue. Notification of such locations should be checked against the most up to date lists available on www.dfa.ie or www.hse.ie.”

3. Section 4 of the circular provides that there is no change to the administrative rules regarding the taking of holidays within the State by those in receipt of payments relevant to the circular. Accordingly, a claimant of one of the relevant payments may continue to receive their payment while holidaying in Ireland for a period of up to two weeks in accordance with previous circulars. Sections 2 and 3 of the circular, however, impose additional restrictions in relation to the circumstances where a claimant of Jobseeker’s Benefit, Jobseeker’s Allowance, a payment under the SWA scheme or the Covid PUP may continue in payment while holidaying abroad.
4. Section 2 of the circular pertains to “Jobseeker Holiday procedure” while section 3 deals with payments under the SWA scheme. Section 2 provides that those in receipt of a payment in respect of their status as a jobseeker should, when informing the Department of their intention to take a holiday, provide information as to where they will be holidaying. The circular provides that such applicants should fill out a revised version of the Form UP30 (used to inform the Department of a claimant’s intention to take a holiday) which requires them to provide information in relation to their holiday destination. It seems that this revised form is yet to be published. Where a claimant has already informed the Department of their intention to take a holiday, section 2 states that such claimants should be contacted by Department staff to ascertain their holiday destination.
5. Where a claimant, on foot of Departmental enquiries or having filled out the revised UP30, has stated an intention to holiday abroad, section 2 of the circular states that the following procedure applies:
“If an application is received for holidays outside the State and to a location where self-isolation restrictions apply for people arriving in the State from, the customer should be advised that they are not entitled to a payment for that period and that if they continue to leave the country they will not be entitled to a payment for the duration of the absence from the State, nor will they be entitled to payment for the 14 day quarantine period upon their return.
All such applications should be refused and the customer advised that if it comes to the Department’s attention that a person has continued to travel abroad, their claim should be

suspended from payment for the duration of the period abroad and an additional 14 days. An overpayment can be considered if necessary.”

6. Section 3 of the circular provides as follows in relation to the holiday procedures for payments under the SWA scheme:

“For SWA schemes there is an administrative arrangement that payment may be allowed for up to two weeks per year while a claimant is on holidays, in line with the provisions for Jobseeker’s Allowance.

The amendments to holiday procedures also apply to Basic SWA claims where there is a GSW requirement.”

7. It would seem that, in light of the above, the revised rules in relation to holidays abroad set out in section 3 of the circular apply to payments under the SWA scheme, while the latter paragraph purports to extend these requirements to the Covid Pandemic Unemployment Payment (Covid PUP).

Issues Arising in relation to Circular 35/20

8. First, it should be noted that, despite the “description” contained in the circular as to its purported effect, a Departmental Circular cannot “suspend” the provisions of a Statutory Instrument. Such circulars do not constitute legislation and, accordingly, they may only operate within the parameters of the existing legislative regime. The fact that Article 217 of Statutory Instrument 142 of 2007 has since been amended (as will be discussed later below) is indicative of the fact that it is still in effect and takes primacy over the provisions of the circular.
9. Secondly, a number of issues also arise as to whether Circular 35/20 is compliant with the legislation relevant to social welfare payments for jobseekers, the SWA scheme and the Covid PUP. In particular, questions arise as to whether the circular accords with the provisions of the Social Welfare Consolidation Act 2005 in relation to eligibility for jobseekers and SWA payments during absences from the State. Further, the “purpose” section of the Circular 35/20 provides that, where the relevant travel guidelines provide for a period of self-isolation on return to Ireland, a person subject to those guidelines after returning to the country will not be entitled to receive a payment which requires them to be “genuinely seeking employment” and “available for employment” during any such period of self-isolation.
10. The relevant legislative provisions for each of the payments referenced in the circular in relation to absences from the State and availability for work will be set out in turn below, together with an analysis of whether the circular is compliant with the primary legislation in relation to eligibility for the payments.

Jobseeker’s Benefit

11. The Jobseeker’s Benefit Scheme is set out under Part 2 of the Social Welfare Consolidation Act 2005. Section 249(1) of that Act provides:

“Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit under Part 2 (including any increase of benefit) for any period during which that person—
(a) is absent from the State”

Accordingly, the primary legislation provides that a claimant cannot continue to claim Jobseeker’s Benefit for any period during which they are absent from the State, unless such a period is provided for by way of regulation. The only regulation that allows for any such absence is the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (Statutory Instrument 142 of 2007). Article 217(d) of that Regulation was recently amended by Statutory Instrument 242 of 2020 to read as follows:

“Notwithstanding section 249, a person who is absent from the State shall not be disqualified for receiving –

- (i) Jobseeker’s benefit or jobseeker’s benefit (self-employed), (including any increase thereof) for any period during which that person, or his or her qualified adult, is absent from the State –on holiday, in accordance with the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs, in respect of the first two weeks of any such absence in a calendar year.”

12. The “General Travel Advisory in operation by the Department of Foreign Affairs” currently advises against non-essential travel to all countries overseas with the exception of fifteen countries on the so-called “green list”. It also states as follows in relation to the requirement to self-isolate on entering the State:

“The Irish Authorities require anyone coming into Ireland, apart from Northern Ireland and individuals arriving in Ireland from locations with a security rating of ‘normal precautions’ (“green”), to restrict their movements for 14 days, and this includes citizens and residents returning to Ireland. Restricting your movements means staying indoors in one location and avoiding contact with other people and social situations as much as possible.”

13. Article 217(d) of the 2007 Regulations must be read in light of EU law which allows worker to move within the EU to seek work. Such workers are entitled to retain entitlements to benefits for three months after moving to another member State.

14. The legislation would therefore appear to allow for absences from the State for purposes of a holiday to a country on the so-called “green list” and, perhaps, for the purpose of essential travel to any other location.

15. A strict reading of section 2 of Circular 35/20 appears to accord with this legislation. The circular calls for the suspension of payments in circumstances where a claimant for Jobseeker’s Benefit travels outside the State “and to a location where self-isolation restrictions apply for people arriving in the State”.

16. However, in light of the legislation, the circular should not be interpreted by the officers of the Department in a manner that would suspend payments in circumstances where claimants travel abroad in a manner consistent with the DFA Advice.

17. Section 62(5)(a) of the 2005 Act provides that a claimant for Jobseeker’s Benefit must be “available for employment” and “genuinely seeking” same. The question of whether a claimant meets these criteria is decided in accordance with the 2007 Regulations.

18. Regulation 15 of the 2007 Regulations deals with the question of availability for work and provides in full as follows:

“(1) Subject to sub-article (2), a person shall, for the purposes of Chapters 12 and 12A133 of Part 2 and Chapter 2 of Part 3, be regarded as being available for employment, if he or she can show to the satisfaction of the Minister, that he or she is willing and able, at once, to take up an offer of suitable full-time employment.

(2) Subject to sub-article (4), a person shall not be regarded as being available for employment if he or she imposes unreasonable restrictions on –

- (a) the nature of the employment,
- (b) the hours of work,
- (c) the rate of remuneration,
- (d) the duration of the employment,
- (e) the location of the employment, or

- (f) other conditions of employment he or she is prepared to accept.
- (3) In determining what constitutes suitable full-time employment for the purposes of sub-article (1), regard shall be had to the following
- (a) the skills, qualifications and experience of the person concerned,
 - (b) the period for which the person has been unemployed, and
 - (c) the availability of employment vacancies within travelling distance of his or her residence.
- (4) For the purposes of sub-article (2)(e), employment as a retained fire fighter shall not be regarded as an unreasonable restriction where that person is available for –
- (a) employment which is additional to his or her employment as a retained fire fighter and which would not necessitate cessation of the employment as a retained fire fighter, and/or
 - (b) alternative employment which would necessitate cessation of the employment as a retained fire fighter.”

19. Regulation 16 of the 2007 Regulations deals with the question of whether a person is generally seeking employment and provides in full as follows:

“(1) For the purposes of Chapter 12 and 12A of Part 2 and Chapter

2 of Part 3, a person shall be regarded as genuinely seeking employment if he or she can show, to the satisfaction of the Minister, that he or she has, in the relevant period, taken reasonable steps which offer him or her the best prospects of obtaining employment.

(2) For the purpose of sub-article (1) “steps” shall include –

- (a) applications for employment made to persons –
 - (i) who have advertised the availability of employment, or
 - (ii) who appear to be in a position to offer employment,
 - (b) seeking information on the availability of employment from –
 - (i) employers,
 - (ii) advertisements,
 - (iii) persons who have placed advertisements which indicate that employment is available, or
 - (iv) employment agencies,
 - (c) availing of reasonable opportunities for training which is suitable in his or her circumstances,
 - (d) acting on advice given by an officer of the Minister or other placement service concerning the availability of employment, and
 - (e) taking steps towards establishing or re- establishing himself or herself in self-employment.
- (3) For the purpose of this article, the taking of one step on a single occasion during the relevant period shall not be sufficient unless taking that step on that occasion, in that period, is all that is reasonable for the person concerned to do.
- (4) In determining for the purposes of this article whether, in a relevant period, a person has taken the steps which are reasonable in his or her case, regard shall be had to his or her circumstances, including in particular –
- (a) his or her skills, qualifications and experience,
 - (b) the steps which he or she has taken previously to seek employment,
 - (c) the availability and location of vacancies for employment,
 - (d) the duration of his or her period of unemployment, and

(e) his or her family circumstances.

(5) For the purposes of this article, “relevant period” means the period in respect of which the person concerned has made a declaration in accordance with articles 52, 52G and 118.”

20. It would appear to be on the basis of the above requirements that the circular implies that those in self-isolation after a period of travel abroad are not entitled to claim Jobseeker’s Benefit. Given the proliferation of online working and recruitment, this is a questionable conclusion. Further, many citizens may need to self-isolate for any number of reasons aside from having recently engaged in international travel; however, the Department has not published anything to suggest that claimants of Jobseeker’s Benefit should withdraw their claim for the payment while self-isolating for other reasons. It is thus worth questioning whether the proposition that those who are self-isolating after travelling abroad are unavailable for work or not seeking work is sustainable.

21. In addition, the intention behind the travel abroad might be to seek work in another EU State; per EU law, those travelling for that reason should be considered as “genuinely seeking work” for the period of the travel, provided such period does not exceed three months.

Jobseeker’s Benefit (Self-Employed)

22. The provisions of section 249(1) of the 2005 Act and article 217(d) of the 2007 Regulations apply in an identical manner to the Jobseeker’s Benefit (Self-Employed) payment.

23. Section 68C(2) of the 2005 Act provides that, for the purposes of the eligibility criteria for that payment, “the Minister shall make regulations specifying the circumstances in which a person is or is not to be regarded as being available for and genuinely seeking employment”.

24. Article 52A(1) of the 2007 Regulations provides that a claimant shall not be entitled to the Jobseeker’s Benefit (Self-Employed) payment during a week where he or she “fails to prove to the satisfaction of the Minister that he or she is not engaged in self-employment, is capable of work and is available for employment”. Regulations 15 and 16 of the 2007 Regulations also apply to the Jobseeker’s Benefit (Self-Employed) payment for the purposes of assessing whether a claimant is available for and genuinely seeking employment.

25. Given that the same primary legislation applies, the above analysis in relation to the circular and Jobseeker’s Benefit applies to the application of the circular to claims for the Jobseeker’s Benefit (Self-Employed) payment.

Jobseeker’s Allowance

26. Section 249(6) of the 2005 Act provides as follows:

(6) A person shall be disqualified for receipt of jobseeker’s allowance, pre-retirement allowance, supplementary welfare allowance, disability allowance or farm assist (including any increase in such allowance or assistance) while he or she is—

(a) resident, whether temporarily or permanently, outside the State”

It should be noted that the 2005 Act does not empower the Minister to make regulations further to the provisions of section 249(6).

27. By contrast to Jobseeker’s Benefit, there is no legislative prohibition on claiming Jobseeker’s Allowance while absent from the State, provided that the extent of the absence isn’t such to render the claimant “temporarily resident” abroad. Accordingly, the circular creates a far-reaching prohibition on international travel for claimants of Jobseeker’s Allowance, which is contrary to the primary legislation in relation to eligibility for the payment. It is arguable that

the Departmental Circulars in relation to holidays abroad which pre-dated Circular 35/30 were also contrary to the provisions of the 2005 Act, in limiting claimants to two weeks holidays abroad per annum while in receipt of the payment and imposing a stricter regime than that allowed for under the primary legislation.

28. The relevant primary legislation does not prohibit claims for Jobseeker's Allowance during absences from the State, provided the claimant remains resident therein. It would appear, then, that suspensions during such absences, in light of the circular, would be without legislative basis.
29. Section 141(4) of the 2005 Act provides that a claimant for Jobseeker's Allowance must be "available for employment" and "genuinely seeking" same. Regulations 15 and 16 of the 2007 Regulations also apply to Jobseeker's Allowance for the purposes of assessing whether a claimant is available for and genuinely seeking employment. The analysis set out above at paragraphs 20 and 21 is therefore also applicable in the context of Jobseeker's Allowance.

Supplementary Welfare Allowance

30. The provisions of section 249(6) of the 2005 Act (set out above at paragraph 24) also apply in relation to Supplementary Allowance claims. Accordingly, the circular also imposes a travel restriction which is far more prohibitive than that envisioned by the primary legislation on claimants of Supplementary Welfare Allowance. As with Jobseeker's Allowance, the legislation does not prohibit claims for SWA during absences from the State, provided that the claimant cannot be deemed "temporarily resident" abroad. It would appear, then, that suspensions during such absences, in light of the circular, would be without legislative basis.
31. Neither the 2005 Act nor the 2007 Regulations impose a requirement for claimants of SWA to be available for work or genuinely seeking work. Accordingly, there is no legislative basis for suspending claims for SWA during periods when the claimant is self-isolating following travel abroad.

Covid Pandemic Unemployment Payment

32. There is no primary or secondary legislation in relation to Covid PUP. It appears to be operating as a purely administrative scheme.
33. The criteria for accessing the payment, as set out in the claim form, makes no reference to a requirement to remain in the State, rather it requires claimants to be "resident" in Ireland. It would be absurd to suggest that a person ceases to be resident in Ireland during an absence from the State for as little as two weeks. It therefore appears to be contrary to the terms of the scheme to apply the terms of the circular which disentitle claimants to the payment during brief holidays abroad.
34. The Department's website in relation to the payment states that "Holiday entitlements rules are the same as those for Jobseeker's Payments". The meaning of this statement is wholly unclear in that that is no one set of rules governing entitlements to take holidays when in receipt of a jobseeker's payment. As noted above, the only such set of rules on a legislative basis are those which apply to Jobseeker's Benefit and the legislation specifically provides that those rules apply only to that scheme. In addition, this criteria is additional to the criteria which applied when the scheme was initially introduced. It is not permissible for the Department to now attempt to apply this criteria retrospectively.
35. Circular 35/20, then, appears to imply the existence of additional criteria to the scheme which have not been published and which claimants may not be aware of. Further, it does not appear that claimants for the Covid PUP have been requested to inform the Department of

their intention to travel abroad. It appears unreasonable and irrational, then, to suspend claims where the Department learns a claimant has travelled abroad in circumstances where claimants have not been formally told that such travel may affect their entitlement to the payment.

36. The Department's website in relation to the payment has been recently amended to indicate that claimants must be "genuinely seeking work". However, the regulations in relation to assessing whether claimants are available for or seeking work have not been amended to reflect this. As noted above, regulations 15 and 16 of the 2007 Regulations explicitly only apply to jobseekers payments and so there is no question of a claimant for Covid PUP or SWA being assessed by reference to those regulations. Further, the other criteria for accessing the Covid PUP suggest that it is available to those experiencing a temporary layoff due to the pandemic. It is therefore unclear whether such claimants are expected to seek alternative work while waiting for their regular employment to resume. It is also notable that the application form for the payment has not been updated to include this additional eligibility criterion.

Enforcement of the Circular

37. Finally, issues arise as to how the Department intends to enforce the provisions of Circular 35/20. The powers of the Department in this regard are governed by the Social Welfare Consolidation Act 2005. The 2005 Act provides for how and when the Department may take certain actions at airports and ports.

38. Section 250(16B) of 2005 Act provides as follows in relation to the powers of Social Welfare Inspectors at such locations:

"Where, while attending at any port for the purposes of ensuring compliance with this Act, a social welfare inspector—

- (a) has reasonable grounds to believe that there has been a contravention of this Act, and
- (b) is accompanied by—
 - (i) a member of the Garda Síochána,
 - (ii) an officer of Customs and Excise, or
 - (iii) an immigration officer,

the social welfare inspector concerned may, on production of his or her certificate of appointment—

- (i) question and make enquiries of a person who is a passenger at the port and is preparing to embark, or is embarking, from, or has landed in, the State in relation to any matter that concerns compliance with this Act, and
- (ii) request such person to produce to that inspector any documents or other information as that inspector may reasonably require for the purposes of establishing the identity, and, where appropriate, the habitual residence, of that person."

39. While the above section gives Social Welfare Inspectors broad powers in respect of questioning persons at airports, it should be noted that Social Welfare Inspectors must have some "reasonable grounds" of suspicion before using these powers. Further, it is arguable that this power is further limited by section 250(2) of the 2005 Act which states that such Inspectors shall investigate questions "referred to him or her by the Minister". The question thus arises as to whether an Inspector can engage their powers under section 250(16B) in respect of a claimant whose entitlement has not been questioned and referred to the Inspector.

40. It is notable that while the 2005 Act provides for specific procedures in relation to the provision of information to Social Welfare Inspectors from Financial Institutions, Employers and Landlords, there is no provision in the Act in respect of the provision of information by ports or airports.

Conclusion

41. The above analysis focuses on whether the circular accords which the legislative schemes for each of the payments to which it applies. It appears that, with the exception Jobseeker's Benefit, the circular does not have a sound legislative basis. In the context of each of the other payments, it appears the circular creates an eligibility criteria in relation to presence in the State which is not provided for in the primary legislation and, as a result, cannot be considered enforceable. There are further questions as to whether the eligibility criteria provided for in the primary legislation in relation to availability for work can be considered as providing a legislative basis for suspending payments during periods of self-isolation.

42. Further issues do arise, however, in relation to whether the circular unlawfully interferes with claimants constitutional right to travel and their rights as EU workers to freedom of movement within the European Union and/or in relation to whether the circular is in breach of Equality legislation in that it may have a greater impact on non-Irish nationals than Irish nationals.

43. Nothing further occurs.

28th of June 2020

Free Legal Advice Centres

Appendix 3

Re: Eligibility Criteria for the Covid Pandemic Unemployment Payment & the Power of the Department to Assess Overpayments in respect of supposed Breaches of those Criteria.

Introduction – The Covid Pandemic Unemployment Payment

1. In March 2020, the Department of Employment Affairs and Social Protection introduced the Covid Pandemic Unemployment Payment (hereafter “the Covid PUP”) in response to the Covid-19 Pandemic. The payment was described as follows by the Department on its introduction:

“This new payment will be available to all employees and the self-employed who have lost employment due to a downturn in economic activity caused by the COVID-19 pandemic. Students will also be able to avail of the payment if they lose their income due to their workplace closing as a result of the COVID-19 pandemic.

The payment has a simple one-page application form and will be paid for a period of 6 weeks at a flat rate payment of €203 per week for jobseekers. It is designed to quickly deliver a social welfare payment to the unemployed and provide income security during this 6-week period.”

2. On 26 March 2020, the Department announced that the Covid-PUP would be paid for a twelve week period at a flat rate of €350 per week. The Department has since extended the period during which the Covid PUP will be paid until April 2021 and has announced that it will accept applications for the payment until 17 September 2020.
3. In the week ending 5 May 2020, approximately 598,000 people were in receipt of the Covid PUP. As of 10 August 2020, 262,500 people remained in receipt of the payment. The rate of the payment has since been split into two bands, €350 per week and €203 per week. The rate of the payment is determined by reference to a claimants earnings in 2019 or in January and February 2020 (whichever is the higher); those with average earnings of above €200 for either period are entitled to the higher rate of the payment.
4. On 5 August 2020, the Social Welfare (Covid-19) (Amendment) Act 2020 was signed into law. The Act replaces the existing Covid-PUP scheme with a statutory scheme by amending the Social Consolidation Act 2005 to make specific provision for the payment. It is notable that the 2020 Act refers to the previous Covid PUP Scheme as “the payment known as the pandemic unemployment payment paid under section 202 in respect of that week”. Section 202 of the 2005 Act forms part of the Supplementary Welfare Allowance schemes and allows for the payment of Urgent Needs Payments. This is the first reference to the Covid PUP having been paid under the SWA scheme. As will be addressed further below, it unclear whether section 202 of the 2005 Act can properly be considered as providing a legislative basis for the Covid PUP scheme or whether claims for the payment should be considered as having been paid pursuant to a purely administrative scheme.
5. Save for provisions in relation to the attribution of PRSI contributions, the 2020 Act does not purport to have retrospective effect. Accordingly, during the period from March 2020 to 5 August 2020, the Covid PUP scheme was not paid pursuant to the 2020 Act and the provisions of the 2020 Act cannot be applied to claims for that payment during that period. The eligibility criteria set out in the 2020 Act, then, only apply to apply to claims for the Covid PUP from 5 August 2020 onwards. For ease of reference, this note will refer to the payment paid by the Department during the period from March 2020 to 5 August 2020 as the “old” Covid

PUP.

6. Per a press release issued by the Department on 27 July 2020, the Department has initiated a series of “post payment checks for the COVID-19 Pandemic Unemployment Payment” to include “integrity checks” for the purpose of “[verifying] if a person is who they claim to be and that they are entitled to claim payment”.
7. It is therefore the case that the Department is reviewing payments made on foot of claims for the old Covid PUP by reference to the eligibility criteria for that payment. However, the Department has not provided any information in relation to the exact eligibility criteria by reference to which they are reviewing claims. This note will attempt to discern what eligibility criteria can be said to have applied to the old Covid PUP and what powers are available to the Department in relation to reviewing claims for the payment.

Sources of Eligibility Criteria for the old Covid PUP

8. As mentioned above, the first reference to a statutory basis for the old Covid PUP scheme arose in the Social Welfare (Covid-19) (Amendment) Bill 2020 which referred to the payment as having been “paid under section 202 [of the 2005 Act]”. No previous information published by the Department made any reference to a legislative basis for the scheme. The only information published by the Department in relation to the eligibility criteria for the scheme were on the application form for the payment and on the webpage in relation to the payment on www.gov.ie. Claimants for the payment could therefore have only been aware of the eligibility criteria as set out on that webpage and on the application form itself. In the absence of any indication as to the statutory basis for the scheme, no claimant could possibly have been aware of what, if any, additional eligibility criteria for the scheme arose from statute.

Application Form for the old Covid PUP

9. The application form for the Covid PUP, published in March 2020, required applicants to sign the following declaration in order to confirm their eligibility for the payment:
 - I declare that I am not being paid by my employer at the moment.
 - I state that I will inform the Department if there are any changes in my circumstances which may affect my entitlement to payment.
 - I know that it is an offence to provide false information or to withhold information to qualify for this payment.”
10. At least two further versions of the application form have since been published by the Department, one bearing the footnote “Edition: April 2020” and another with the footnote “Edition: April 2020”.
11. The first line of the declaration on the application form was amended in the April 2020 version to read as follows:
 - I declare that I am fully unemployed, have lost my income and am not being paid by my employer at the moment due to COVID-19.”
12. Further, a second page was added to the April 2020 version of the application form under the heading “Eligibility Notice for Covid-19 Pandemic Unemployment Payment”. That notice contains the following information:

“The COVID-19 Pandemic Unemployment Payment is an emergency payment of €350 per week introduced by the Government. It is available to employees and the self-employed who have lost their employment and income on (or after) 13 March due to the COVID- 19 (Coronavirus) pandemic.

You are eligible to apply for the COVID-19 Pandemic Unemployment Payment if...

- You were in employment or self-employment immediately before Friday 13 March, and
- You have been temporarily laid –off from work or asked to stay at home from work, and
- Your employer is not in a position to retain you on their payroll, and
- You are not in receipt of any employment income, and
- You are between 18-66 years of age, and
- You are resident in the Republic of Ireland.

You are not eligible to apply for the COVID-19 Pandemic Unemployment Payment if...

- You were not in employment immediately before Friday 13 March, or
- You were not laid-off from work by your employer, or
- You are continuing to receive income from your employment, or
- You voluntarily left your employment.

Do not claim the COVID-19 Pandemic Unemployment Payment if your employer has not laid you off, or if you were not previously in employment, or if you are still in receipt of employment income, or if your employer takes you back on their payroll.

If you think you inadvertently applied for the COVID-19 Pandemic Unemployment Payment, or if your employer has re-employed you under the new Temporary Wage Subsidy Scheme, you must close your COVID-19 Pandemic Unemployment Payment claim now. Claims can be closed via the Department’s online portal at www.MyWelfare.ie under the COVID-19 payment section.

The Department will review all claims. It is engaging with Revenue Commissioners to identify those workers not eligible to avail of the COVID-19 Pandemic Unemployment Payment and will take steps to recover any incorrect payment. Any person who knowingly claims the payment in circumstances where they are not entitled to the payment will be prosecuted.”

13. The only amendment to the notice on the August 2020 version of the application form was to remove the reference to the payment being paid at a rate of €350. The declaration on the August 2020 version of the form is in identical terms to the declaration on the April 2020 version.
14. No version of the application form, including the August 2020 version, includes any reference to there being any eligibility criteria for the scheme (or where those criteria are set out), nor has any version of the form ever included a reference to a legislative basis for the payment (which may give rise to additional eligibility criteria).

Information published on Gov.ie

15. In March 2020, a webpage providing information in relation to the Covid PUP was published on www.gov.ie. A “How to Qualify” section was added to that webpage on 19 March 2020 which purported to provide information as to circumstances in which a prospective claimant satisfied the eligibility criteria for the scheme.
16. Between 19 March 2020 and 5 August 2020 (when the payment was placed on a statutory footing by the 2020 Act), the “How to Qualify” section was amended at least seven times. The amendments to the section are set out below in full at the Appendix attached to this document titled, [Appendix to FLAC Note – Information published on Gov.ie re the Eligibility Criteria for the “old” Covid PUP](#)
17. The information on the various versions of the “How to Qualify” section of the Covid PUP

webpage implied the existence of numerous other eligibility criteria for the scheme which are not reflected on the application form for the payment.

18. At some point between 21 April 2020 and 6 May 2020, the information published in that section was amended to State that applicants are only eligible for the payment if they “worked in the Republic of Ireland or were a cross border frontier worker”. The application form for the payment has never stated that it is a condition of the scheme that claimants have previously worked in the Republic of Ireland, or even that they were resident in Ireland during their previous employment. Further, no information published by the Department ever suggested a requirement for claimants to have previously paid PRSI contributions in respect of employment in the State.
19. Between 22 July 2020 and 27 July 2020, the text of the “How to Qualify” section was amended to state that applicants are only eligible for the payment if they “are genuinely seeking work”. Again, no information previously published by the Department before that date suggested that this was an eligibility criterion for the scheme.
20. The application form for the Covid PUP has always stated that claimants for the payment must be “resident in the Republic of Ireland”. The “How to Qualify” section of the Covid PUP webpage originally stated that applicants could “apply for the Covid-19 Pandemic Unemployment Payment if [they]... live in the Republic of Ireland”. However, by late April 2020, this was amended to state that applicants could “apply for the Covid-19 Pandemic Unemployment Payment if [they are]... currently living in the Republic of Ireland”.
21. Between 22 July 2020 and 27 July 2020, the following sentence was added to the “How to Qualify” section:
“Holiday entitlements rules are the same as those for Jobseeker's Payments.”
However, on 30 July 2020, this sentence was removed. No information previously published by the Department made any reference to the existence of specific rules governing eligibility for the payment during absences from the State or a necessity to comply with the “Holiday Rules” which apply to Jobseeker’s payments.

Section 202 of the 2005 Act and the Eligibility Criteria for the old Covid PUP

22. As noted above, the Social Welfare (Covid-19) (Amendment) Bill 2020 refers to the Covid PUP as (prior to its enactment) having been “paid under section 202 [of the 2005 Act]”. It is thus worth examining what, if any, eligibility criteria for the “old” Covid PUP may arise from section 202 and whether section 202 provides a statutory basis for the eligibility criteria for the payment which were published on gov.ie but not on the application form for the payment.
23. Section 202 of the 2005 Act allows the Department to grant payments in cases of urgency even where the claimant does not satisfy certain eligibility criteria for receipt of other payments under the SWA scheme.
24. Section 195(b) of the 2005 Act provides that a payment made pursuant to the SWA scheme (including under section 202) may be awarded on the pre- condition that the claimant in genuinely seeking work. It follows that such a condition does not generally apply to a claim for SWA unless the Department specifically imposes the pre-condition before it grants a payment under the scheme and such a condition cannot be retrospectively applied to a claim under the scheme.
25. Further, section 249(6) of the 2005 Act states as follows in relation to the residency requirements for entitlement to a payment under the SWA scheme:

“A person shall be disqualified for receipt of jobseeker’s allowance, pre-retirement allowance, supplementary welfare allowance, disability allowance or farm assist (including any increase in such allowance or assistance) while he or she is—

(a) resident, whether temporarily or permanently, outside the State”

As FLAC has previously noted, section 249(6) does not create an absolute prohibition on claiming payments under the SWA scheme while absent from the State, provided that the extent of the absence is not such as to render the claimant “temporarily resident” abroad.

26. Payments made under the SWA scheme (including payments under section 202 of the 2005 Act) constitute social assistance payments. Claimants for such payments are not required to have made any PRSI contributions in order to be eligible for receipt of such payments.

27. No provision in section 202 of the 2005 Act, or indeed in the 2005 Act as a whole, has the effect of disentitling a claimant to a payment under that section, or indeed any social assistance payment, on the basis that they were not previously employed by an Irish employer.

28. Finally, it should be noted that it is also arguable that the Covid PUP was not paid pursuant to section 202 of the 2005 Act at all. Section 189 of the 2005 Act provides as follows:

“Subject to this Act, every person in the State whose means are insufficient to meet his or her needs and the needs of any qualified adult or qualified child of the person shall be entitled to supplementary welfare allowance.”

It is therefore the case that, in order for the Department to award a payment under the SWA scheme (including a payment under section 202), they must have conducted a means test prior to awarding the claim which established that a claimant’s means are insufficient to meet their needs. The Covid PUP was never subject to any form of means testing nor were claimants ever asked to declare that their means were insufficient to meet their needs.

29. While there is no prescribed form of means testing which must be conducted for an SWA payment to be awarded, it appears that some form of means test, specific to an individual claimant, must be conducted before a payment may be awarded pursuant to section 202. Section 202 allows for the Department to award payments where they are urgently needed without reference to many of the usual eligibility criteria for payments under the SWA scheme, but it does not allow for such payments to be made in the absence of means-testing.

30. It is worth noting in this regard that all payments previously made by the Department under section 202, such as Urgent Needs Payments awarded by Community Welfare Officers, are only paid once it has been established that claimant’s means are not such as to enable them to meet an urgent expense. Indeed, the Humanitarian Assistance Scheme, which provides financial assistance to households to meet their essential needs in the aftermath of flooding, and which is paid pursuant to section 202, is subject to a means test in order to establish that the claimant does not have the means to meet their essential needs.

31. The arguments advanced by the Minister for Social Protection as a Respondent in *C.A. v The Minister for Justice and Equality, The Minister for Social Protection & Others* [2014] IEHC 532 are also notable in this regard. In that matter, the Applicants argued that Direct Provision Allowance constituted a payment under the SWA scheme (and was, on that basis, *ultra vires* the powers of the Minister under the 2005 Act which prohibits the making of social assistance payments to asylum seekers and those seeking subsidiary protection). The Respondents, in arguing that Direct Provision Allowance was paid pursuant to an administrative scheme rather than as an SWA payment, made the following argument (as summarised at paragraph 13.8 of the judgment of MacEochaidh J):

“[Direct Provision Allowance] cannot be a Supplementary Welfare Allowance payment as it is not means tested. Counsel notes that to qualify for the Supplementary Welfare Allowance an individual must show that his/her means are insufficient to meet his/her needs and those of dependents. The DPA depends on a person's status in the State as an applicant for protection and not their means.”

32. It is similarly the case that qualification for the old Covid PUP was based on a person's status as having been laid off from their employment immediately prior to 13 March 2020 and not their means. While MacEochaidh J did not rule on the arguments raised in that case in relation to the correct classification of Direct Provision Allowance (having held that the Applicants did not have standing in relation to this element of their challenge to the Direct Provision System), he did hold (at paragraph 13.20 of his judgment) that the Executive does have the power to make cash payments pursuant to administrative schemes and is not prohibited from “using the systems used for social welfare payments” to administer those payments.
33. In circumstances where claims for the Covid PUP scheme were not means tested in any sense, it is therefore arguable that they could not have been paid pursuant to the SWA Scheme (more specifically, under section 202 of the 2005 Act) and that the Covid PUP scheme instead constituted a purely administrative, non-statutory scheme. In that case, no eligibility criteria for the scheme can be said to arise from the 2005 Act.

Information provided to Claimants re the Eligibility Criteria for the old Covid PUP

34. Prior to the publication of the 2020 Act as a Bill, no previous information published by the Department in relation to the old Covid PUP indicated that the scheme was operating pursuant to section 202 of the 2005 Act. Similarly, no information to this effect was directly provided to claimants.
35. Notwithstanding the information published in the “How to Qualify” section of the Covid PUP webpage on gov.ie, it does not appear that claimants were ever advised by the Department of changes to the eligibility criteria for the payment or as to how such changes may affect their ongoing entitlement to the payment.
36. More specifically, save from the updated version of the “How to Qualify” section of the Covid PUP webpage published on gov.ie between 21 April 2020 and 6 May 2020, no information was ever provided to claimants to the effect that eligibility for the payment was predicated on their having been previously employed in the Republic of Ireland. No information at all was ever published by the Department to the effect that eligibility for the payment was predicated on claimant's having previously paid PRSI contributions.
37. Save from the updated version of the “How to Qualify” section of the Covid PUP webpage published on gov.ie between 22 July 2020 and 27 July 2020, claimants for the old Covid PUP were never informed that their continued eligibility for the payment was predicated on them “genuinely seeking work”. No information previously published by the Department indicated that this was an eligibility criterion for the payment.
38. It does not appear that claimants for the Covid PUP were ever formally advised by the Department that absences from the State, whether for holidays or other purposes, would disentitle them the payment.
39. In June 2020, claimants for the payment were asked to confirm their continued eligibility for the payment through mywelfare.ie by 13 July 2020 (this deadline was subsequently extended). The online form for confirming continued eligibility asked claimants to confirm what country their previous employment had been based in. It also asked claimants to agree to a declaration to the effect that they are currently living in the Republic of Ireland and not

receiving any income from employment or self-employment.

40. The online form did not explicitly state that a claimant declaring that they had been previously employed outside the State would disentitle them to the payment. As originally published, the form did not make any reference to a requirement to be genuinely seeking work or ask claimants to confirm that they were seeking work.

41. The webpage on gov.ie which provided information in relation to the process of confirming continued eligibility for the payment originally stated as follows:

“To continue receiving this payment you must be:

- fully unemployed - permanently or temporarily, as a result of COVID-19
- or, if self-employed, your trading income has been significantly reduced
- living in the Republic of Ireland”

However this was subsequently amended to state that continued eligibility was also contingent on the claimant “genuinely seeking work”. It is unclear whether the online form for confirming eligibility was ever updated so as to ask claimants to confirm that they are seeking work.

Eligibility Criteria for the old Covid PUP

42. All information published by the Department in relation to the old Covid PUP since March 2020 has specified that in order to be eligible for the payment a claimant must be a resident of the Republic of Ireland; aged between 18 and 66; have been employed or self-employed immediately prior to 13 March 2020; have been temporarily laid off; and must not be in receipt of any income from employment.

43. References to additional eligibility were belatedly and sporadically added to information page in relation to the payment on gov.ie. These supposed additional criteria include:

- A requirement to be genuinely seeking work.
- A requirement to have been previously employed in the Republic of Ireland.
- A requirement to comply with the existing “Holiday Rules” which apply to Jobseeker’s payments.

44. None of these supposed additional criteria were ever added to the application form for the payment nor were those who were already in receipt of the payment ever informed of a need to comply with the criteria in order to continue to be eligible for the payment.

45. Claimants were never informed that the old Covid PUP was paid pursuant to section 202 of the 2005 Act. Even if the payment could properly be considered as having been paid pursuant to the SWA scheme, that would not automatically give rise to any of the above supposed additional eligibility criteria applying to claims for the old Covid PUP.

46. In light of the fact that claimants were not made aware of these criteria, and that they cannot be considered as having automatically arisen as criteria for the scheme by merit of its legislative basis, it is submitted that the additional criteria, set out above at paragraph 43, cannot and should not be considered as part of the scheme governing eligibility for the old Covid PUP.

Departmental Reviews of claims for the Old Covid PUP

47. Since April 2020, the application from the Covid PUP has stated that “[the] Department will review all claims. It is engaging with Revenue Commissioners to identify those workers not

eligible to avail of the COVID-19 Pandemic Unemployment Payment and will take steps to recover any incorrect payment. Any person who knowingly claims the payment in circumstances where they are not entitled to the payment will be prosecuted". The press release of 27 July 2020 indicates that the Department has begun the process of reviewing claims for the payment

48. The statement on the application form in relation to reviews appears to envision a review of claimant's eligibility for the payment in line with the criteria for same set as set out thereon. As noted above, the application form for the payment states that residents of the Republic of Ireland, who are between the ages of 18 and 66, who were employed or self-employed immediately prior to 13 March 2020 and who have been temporarily laid off and are in receipt of no income from employment, are eligible for the payment.
49. It is clear then, that claimants for the payment were aware that their claim was subject to certain eligibility criteria, that the Department intended to review all claims to ensure that they satisfied those criteria, and that the Department may seek to recover any monies paid to claimants who do not satisfy the criteria. However, the above analysis of the information published by the Department in relation to the eligibility criteria for the scheme, also indicates that many claimants would not have been aware of a number of purported additional eligibility criteria for the payment which were not set out on its application form or that their claim would be reviewed by reference to those supposed additional criteria.
50. As well as reviewing claims for the payment in order to establish that claimants were eligible for the payment when applying for it, the Department has also asked claimants to provide information in order to confirm their continued entitlement to the payment. As noted above, the online form used for this purpose asks claimants to confirm that they remain unemployed and in receipt of no employment income. It also asks claimants to provide details of their employment, including the details of what country that employment was based in.
51. Neither the warning on the application form for the Covid PUP (in relation to the Department's intention to review all claims) nor the information provided to claimants in relation to the need to confirm their continued eligibility for the payment give rise to the implication that there are any eligibility criteria for the payment save for those criteria set out on its application form. Just as claimants were never directly or formally advised by the Department of the existence of additional eligibility criteria for the payment, claimants were never informed that their claim would be reviewed by reference to those additional criteria.

Power of the Department to Revise Decisions to award payment of the Covid PUP and pursue Overpayments

52. Section 301(a)(i)(I) of the 2005 Act empowers Deciding Officers to revise decisions previously made (including decisions to award payments) in circumstances where it appears to them that that decision was incorrect "in the light of new evidence or new facts which have been brought to his or her notice since the date on which the decision was given".
53. Section 335 of the 2005 Act provides that, in circumstances where the effect of a revised decision is to disentitle a claimant to a payment for a period during which they were in payment, the payments made to the claimant during that period become repayable to the Department. The 2005 Act and S.I. 142 of 2007 provide for the processes by which the Department may pursue the recovery of such overpayments.
54. As noted above, it is unclear whether the old Covid PUP can properly be considered as having being paid pursuant to section 202 of the 2005 Act. This raises doubts as to whether Deciding Officers have the power to revise decisions and assess overpayments in relation to claims for

the Covid PUP (in circumstances where the original decision to award those claims may not have been a decision made pursuant to the 2005 Act).

55. It is the case, though, that the application form for the payment did inform applicants that claims for the payment would be subject to review and that they would be liable to repay claims paid to them in circumstances where they did not satisfy the eligibility criteria for the payment.
56. However, in light of the above analysis of the eligibility criteria for the scheme, it is submitted that any such review process should only be concerned with claimants' compliance with the eligibility criteria for the old Covid PUP as set out on its application form. In circumstances where criteria such as a requirement to have been employed in the republic of Ireland, to comply with the "Holiday Rules" for Jobseeker's payments and a requirement to be genuinely seeking work cannot properly be said to form additional eligibility criteria for the old Covid PUP, a failure to comply with these criteria cannot be said to disentitle claimants to the payment. Further, a failure to comply with these criteria should not give rise to a revised decision disentitling claimants to the payment retrospectively and/or assessing an overpayment against them.

Appendix to FLAC Note – Information published on Gov.ie re the Eligibility Criteria for the "old" Covid PUP

1. As of 19 March 2020, the "How to Qualify" of the Covid PUP webpage on gov.ie read as follows:

"Both employees and self-employed people can apply for the new COVID-19 Pandemic Unemployment Payment.

You can apply for the payment if you:

- are aged between 18 and 66 years AND
- you have lost employment due to the COVID-19 (Coronavirus) pandemic

This includes people who have been put on part-time or casual work. Students who have lost employment can also apply."

2. By 22 March 2020, the text in "How to Qualify" section had been replaced with the following:

"Both employees and self-employed people can apply for the new COVID-19 Pandemic Unemployment Payment.

You can apply for the payment if you are aged between 18 and 66 years and

- you have lost employment due to the COVID-19 (Coronavirus) pandemic

or

- you are a non EU/EEA worker over 18 who has lost employment due to the COVID-19 (Coronavirus) pandemic or
- you are a student over 18 who has lost employment due to the COVID-19 (Coronavirus) pandemic

or

- you are a non-EU/EEA student over 18 who has lost employment due to the COVID-19 (Coronavirus) pandemic or
- you are a part time worker over 18, earn less than € 203 per week and have lost employment due to the COVID-19 (Coronavirus) pandemic"

3. Between 24 March 2020 and 29 March 2020, the text in "How to Qualify" section was

replaced with the following:

“You can apply for the new COVID-19 Pandemic Unemployment Payment if you:

- are aged between 18 and 66 years old and
- live in the Republic of Ireland and
- have lost your job due to the COVID-19 pandemic or
- if you are self-employed and have ceased trading due to the pandemicIf you are an employee and have:
 - lost your job
 - been temporarily laid off
 - asked to stay at home
- not getting any money from an employer The payment also applies to:
 - non EU/EEA workers who have lost employment due to the COVID-19 (Coronavirus) pandemic
 - students (and non-EU/EEA students) who have lost employment due to the COVID-19 (Coronavirus) pandemic
 - part-time workers

If you voluntarily left your employment or self-employment or do not meet the above criteria, you cannot claim the Covid-19 Pandemic Unemployment Payment”

4. The next day (30 March 2020), the above was amended to include the following beneath the text as set out above:

“If you are a Cross Border Frontier Worker and effected by COVID- 19 pandemic.”

5. Between 1 April 2020 and 3 April 2020, the following further addition was made to the text in the “How to Qualify” section of the Covid PUP webpage on gov.ie:

“The Department of Employment Affairs and Social Protection wishes to confirm that there are no plans in place to share any data we receive as part of an immigrant’s application for a Covid-19 Pandemic Unemployment Payment with GNIB or the Department of Justice and Equality.”

6. On 4 April 2020, the “How to Qualify” section was again amended to read, in full, as follows:

“You can apply for the new COVID-19 Pandemic Unemployment Payment if you:

- are aged between 18 and 66 years old and
- live in the Republic of Ireland and
- have lost your job due to the COVID-19 pandemic or
- have been temporarily laid off due to the COVID-19 pandemic

The payment also applies if you are:

- self-employed and your trading income has ceased due to COVID-19

- a non EU/EEA workers who have lost employment due to the COVID-19 (Coronavirus) pandemic
- a student (and non-EU/EEA students) who have lost employment due to the COVID-19 (Coronavirus) pandemic
- part-time worker

If you voluntarily left your employment or self-employment or do not meet the above criteria, you cannot claim the COVID-19 Pandemic Unemployment Payment.

If you are a Cross Border Frontier Worker and affected by COVID-19 pandemic.

The Department of Employment Affairs and Social Protection wishes to confirm that there are no plans in place to share any data we receive as part of an immigrant's application for a Covid-19 Pandemic Unemployment Payment with GNIB or the Department of Justice and Equality."

7. Between 21 April 2020 and 6 May 2020, the "How to Qualify" section was again amended to read, in full, as follows:

"You can apply for the COVID-19 Pandemic Unemployment Payment if you:

- are aged between 18 and 66 years old and
- currently living in the Republic of Ireland and
- have lost your job due to the COVID-19 pandemic or
- have been temporarily laid off due to the COVID-19 pandemic and
- worked in the Republic of Ireland or were a cross border frontier worker and
- are not in receipt of any employment income

The payment also applies if you are:

- self-employed and your trading income has ceased due to COVID-19
- a non EU/EEA worker who has lost employment due to the COVID-19 pandemic
- a student (or a non-EU/EEA student) who has lost employment due to the COVID-19 pandemic
- part-time worker

If you voluntarily left your employment or self-employment or do not meet the above criteria, you cannot claim the COVID-19 Pandemic Unemployment Payment. The Department of Employment Affairs and Social Protection wishes to confirm that there are no plans in place to share any data we receive as part of an immigrant's application for a COVID-19 Pandemic Unemployment Payment with GNIB or the Department of Justice and Equality."

8. Between 12 July 2020 and 22 July 2020, the following was added to the text of the "How to Qualify" section as set out above:

"If you have been temporarily placed on a shorter working week, you may qualify for Short Time Work Support."

9. Between 22 July 2020 and 27 July 2020, the text of the "How to Qualify" section was again amended to read, in full, as follows:

"You can apply for the COVID-19 Pandemic Unemployment Payment if you:

- are aged between 18 and 66 years old and
- are currently living in the Republic of Ireland and
- have lost your job due to the COVID-19 pandemic or
- have been temporarily laid off due to the COVID-19 pandemic and
- worked in the Republic of Ireland or were a cross border frontier worker and
- are not in receipt of any employment income and
- are genuinely seeking work

The payment also applies if you are:

- self-employed and your trading income has ceased due to COVID-19
- a non EU/EEA worker who has lost employment due to the COVID-19 pandemic
- a student (or a non-EU/EEA student) who has lost employment due to the COVID-19 pandemic
- a part-time worker

Holiday entitlements rules are the same as those for Jobseeker's Payments.

You must inform the Department if your circumstances change.

If you voluntarily left your employment or self-employment or do not meet the above criteria, you cannot claim the COVID-19 Pandemic Unemployment Payment.

If you have been temporarily placed on a shorter working week, you may qualify for Short Time Work Support.

The department can confirm that there are no plans in place to share any data we receive as part of an immigrant's application for a COVID-19 Pandemic Unemployment Payment with GNIB or the Department of Justice and Equality."

10. On 30 July 2020, the reference to the "holiday entitlement rules" for the Covid PUP being the same as for Jobseeker's payments was removed from the "How to Qualify" section.

11. Between 2 August 2020 and 10 August 2020, the following addition was made to the "How to Qualify" section beneath the heading "The payment also applies if you are":

"living in Direct Provision and have lost employment due to the COVID-19 pandemic"

12. No further amendments have been made to the "How to Qualify Section" as of 14 August 2020.

Appendix 4

Re: The Social Welfare (Covid-19) (Amendment) Act 2020 and the Covid Pandemic Unemployment Payment

1. On 5 August 2020, the Social Welfare (Covid-19) (Amendment) Act 2020 was signed into law. The Act replaced the existing Covid PUP scheme with a statutory scheme by amending the Social Consolidation Act 2005 to make specific provision for the payment. The 2020 Act provides that, subsequent to its enactment, the Covid Pandemic Unemployment Payment (hereafter "the Covid PUP") is to be paid pursuant to the newly inserted Chapter 12B of Part 2 of the 2005 Act.

Specifically, the 2020 Act amends the 2005 act to state as follows at section 68L(4):

"Subject to this Act, a person who was, immediately before the coming into operation of section 11 of the Social Welfare (Covid- 19)(Amendment) Act 2020, in receipt of the payment known as the pandemic unemployment payment paid under section 202 [of the 2005 Act], shall, subject to this Chapter, be paid the Covid-19 pandemic unemployment payment."

2. The amendments to the 2005 Act provided for in the 2020 Act provide a specific statutory basis for the eligibility criteria for the Covid PUP. This note will set out the criteria for the payment which arise from the 2020 Act and highlight a number of concerns arising from same.

3. As noted above, the 2020 Act refers to the Covid PUP having, prior to its enactment, having been paid pursuant to section 202 of the 2005 Act. FLAC's note on the so-called "old Covid PUP" (the payment made under the same name during the period 13 March 2020 to 5 August 2020) addresses in detail whether the payment can properly be considered as having been paid under section 202 of the 2005 Act during this period. Given that payments under section 202 must be means-tested, and the Covid PUP was not, it seems that the payment should be properly referred

to as having been paid pursuant to an administrative scheme during this period.

Eligibility for the Covid Pandemic Unemployment Payment from 5 August 2020

4. The newly inserted Chapter 12B of Part 2 of the 2005 Act consists of sections 68L to 68P which set out the eligibility criteria for the Covid PUP under that Act. Section 68L(1)(a) states that the Covid PUP is payable to a person who “has attained the age of 18 years and has not attained pensionable age”. Further, section 68L(1)(b) provides that “on or after 13 March 2020” such persons must have been:

“(i) an employed contributor in the week immediately before he or she ceased to earn an income from the employment concerned and lost his or her employment as a direct consequence of Covid-19 (including the adverse effects of Covid-19 on the business of his or her employer and the adverse effects of measures required to be taken by his or her employer in order to comply with, or as a consequence of, Government policy to prevent, limit, minimise or slow the spread of infection of Covid-19), or

(ii) in insurable self-employment in the week immediately before the date on which he or she can demonstrate to the Minister that the reckonable income or reckonable emoluments ceased, or reduced, as a direct consequence of Covid-19 (including the adverse effects of Covid-19 on such self-employment and the adverse effects of measures required to be taken by him or her in order to comply with, or as a consequence of, Government policy to prevent, limit, minimise or slow the spread of infection of Covid-19), to the extent that he or she would be available to take up full-time employment”

Further, section 68L(1)(b) provides that, in order to be eligible for the payment, such persons must not be:

“(i) an employed contributor whose employer is, or was, in receipt of the temporary wage subsidy, or
(ii) an employed contributor referred to in section 38C(1)(f) whose employer was, before the coming into operation of Part 7 of the Act of 2020, in receipt of a subsidy referred to in section 38C(1)(f)”

Finally, section 68L(1) provides the following further eligibility criteria for the payment:

- “(d) the person is not engaged in insurable employment,
(e) the person satisfies the contribution conditions in section 68M,
(f) he or she is capable of work,
(g) he or she is genuinely seeking, but is unable to obtain, employment suitable for him or her having regard to his or her age, physique, education, normal occupation, place of residence and family circumstances, and
(h) the person was not in receipt of the payment known as the pandemic unemployment payment paid under section 202 in respect of that week.”

5. Section 68L(3) of the 2005 Act sets out specific circumstances in which persons will be deemed to not satisfy the criteria for the payment set out at section 68L(b)(i) (which provides that a claimant must have lost their employment as a result of the Covid-19 pandemic in order to be entitled to the payment):

“The conditions specified in subsection (1)(b)(i) will not be satisfied where a claimant—

- (a) has lost the employment concerned through his or her own misconduct or has voluntarily left his or her employment,
(b) refuses an offer to return to the employment concerned,
(c) has refused an offer of suitable employment,
(d) has failed or neglected to avail himself or herself of any reasonable opportunity of obtaining suitable employment, or
(e) has failed or neglected to avail himself or herself of any offer of support from, or proposed by, the Minister to enable himself or herself to improve his or her prospects of obtaining employment.”

Section 68L(5) empowers the Minister to make similar such regulations in relation to the entitlement to the payment of the self-employed and employers.

6. Section 68M of the 2005 Act sets out the PRSI contribution conditions for the Covid PUP:
“(a) in the case of a person referred to in section 68L(1)(b)(i), he or she has qualifying contributions in respect of not less than one contribution week in the 4 weeks immediately before claiming the Covid-19 pandemic unemployment payment, or
(b) in the case of a person referred to in section 68L(1)(b)(ii), he or she is a self-employed contributor.”

7. Section 68O of the 2005 Act provides that “the weekly rates of the Covid-19 pandemic unemployment payment shall be the amounts corresponding to the amounts set out in Part 6 of Schedule 2 or such weekly rates as may be prescribed in regulations under this section”. Section 68O further provides that the Minister may make regulations in relation to the rate of the payment and the manner in which persons average weekly income shall be calculated in order to calculate which rate they are entitled to. Part 6 of Schedule 2 to the 2005 Act provides for two rates of the payment:
“(a) Band A: €203 in the case of a person whose average reckonable weekly income was less than €200, or
(b) Band B: €350 in the case of a person whose average weekly reckonable income was €200 or more.”

8. The 2020 Act also amends section 241 of the 2005 Act to provide that the Covid PUP is not payable for periods before a claimant makes an application for the payment.

9. Finally, it should be noted that as a payment under Part 2 of the 2005 Act, section 249(1) of that Act applies to the payment. That section provides as follows:
“Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit under Part 2 (including any increase of benefit) for any period during which that person—
(a) is absent from the State”

Issues arising from the eligibility criteria for the Covid PUP under the 2005 Act

10. The 2020 Act provides clarity as to the legislative basis for the Covid PUP and as to the eligibility criteria which attach to the payment. However, FLAC would note concerns in relation to a number of the eligibility criteria for the payment under the legislation.

Absences from the State

11. Section 249(1) of the 2005 Act disentitles claimants to the Covid PUP in all circumstances except “where regulations otherwise provide”. No regulations have been made by the Minister to provide for entitlement to the payment during holidays or absences from the State for essential purposes.

12. Article 217(d) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (Statutory Instrument 142 of 2007) provides that claimants for Jobseeker’s Benefit and Jobseeker’s Benefit (Self-Employed) shall not be disentitled to their payments under Part 2 of the 2005 Act while they are “on holiday, in accordance with the Covid-19 General Travel Advisory in operation by the Department of Foreign Affairs, in respect of the first two weeks of any such absence in a calendar year”. The Department runs an administrative scheme in relation to claims for Jobseeker’s Allowance and Supplementary Welfare Allowance which allows claimants for those payments to remain in payment while on holidays to the same conditions (however, FLAC has previously noted that there does not appear to be a legislative basis for applying such strict “holiday rules” in respect of those payments which are not subject to section 249(1) of the 2005 Act).

13. In addressing the Dáil on 29 July 2020, the Minister for Social Protection stated:
“As I am currently bringing legislation through the Oireachtas to put PUP on a statutory basis, I intend to sign regulations that will bring the PUP payment in line with Jobseeker’s.

That will mean persons on PUP can travel to Green List countries and their payment will not be impacted. As with Jobseeker's, persons travelling to countries outside the Green List can only do so for essential reasons."

The Minister has yet to sign any such regulations and as a result it does not appear that the Covid PUP is payable to claimants during any absences from the State regardless of the reason for such travel or however short its duration.

Requirement to "Genuinely Seek Work"

14. Section 68L(1) of the 2005 Act provides that, in order to be eligible for the Covid PUP, a person must be "genuinely seeking, but is unable to obtain, employment suitable for him or her having regard to his or her age, physique, education, normal occupation, place of residence and family circumstances".

15. Further, section 68L3 of the 2005 Act provides that a person is disentitled to the payment if he or she:

"(c) has refused an offer of suitable employment,

(d) has failed or neglected to avail himself or herself of any reasonable opportunity of obtaining suitable employment"

16. A number of issues arise in relation to the imposition of these criteria on the Covid PUP. The first is that it is materially different to the conditions for payment in place when the payment was introduced. The "eligibility notice" for the Covid PUP on the application form for the payment has always stated (and still states) that the payment is available to those who have been "have been temporarily laid-off from work".

17. Although, the 2020 Act those not propose to apply the condition retrospectively, the condition may have an adverse impact on many claimants eligibility for the payment following its enactment. Many employees and owners of businesses which are currently closed but intend to reopen are currently in receipt of the Covid PUP. It seems unreasonable to expect such claimants to seek alternate work in circumstances where they have every expectation of resuming employment imminently. Further, employees who have been laid off may have to forego statutory redundancy payments from their original employer if they take up other employment elsewhere. The right of an employee to pro-actively claim a redundancy lump sum where they have been on lay-off for four or more continuous weeks was temporarily removed for the duration of the Covid crisis by section 29 of the Emergency Measures in the Public Interest (Covid 19) Act 2020. Thus, if such a person did find another job because, they would have to forego all statutory redundancy as well as minimum notice entitlements.

18. Further, those who have no access to child care services due to the pandemic may be unable to seek work while in receipt of the Covid PUP and their entitlement to same may therefore be prejudiced.

19. Finally, unlike other payments where claimants are required to "genuinely seeking work", the Minister has not introduced any regulations in relation to how claimants are to be assessed as "genuinely seeking work".

Re: The Proposed Retrospective Taxation of the Covid PUP under Section 3 of the Finance Bill 2020

Introduction

Section 3 of the Finance Bill 2020 proposes to amend section 126 of the Taxes Consolidation Act 1997 in order to allow for the taxation of the Covid Pandemic Unemployment Payment (hereafter "the Covid PUP"), including retrospective taxation of claims for the payment from March 2020.

Section 126(3) of the 1997 Act (as amended) presently provides that certain social welfare payments (including Jobseeker's Benefit and "pay-related benefits") paid under the Social Welfare Consolidation Act 2005 shall be treated as income for the purposes of assessing liability for income tax.

Sections 126(6A) and (6B) of the 1997 Act (as amended) specifically exempts certain social welfare payments from being subject to income tax. Amongst the payments subject to this exemption are Jobseeker's Allowance, Working Family Payment and Supplementary Welfare Allowance payments. Any payments made under section 202 of the Social Welfare Consolidation Act 2005 (including Urgent Needs Payments) are also subject to this exemption. The payments subject to this exemption are largely social assistance payments i.e. those payments which are means tested and which are not subject to claimants having made a certain number of PRSI contributions in order to be eligible for the payment. The payments subject to taxation, therefore, are largely social insurance or "benefit" payments which are not means tested but which are subject to a claimant having made a certain number of PRSI contributions.

The overall effect of section 126 is that while some social welfare payments are considered income for the purposes of the tax code, most social assistance payments are exempt from being subject to taxation.

In March 2020, the Department of Employment Affairs and Social Protection introduced the Covid PUP in response to the Covid-19 Pandemic. On 5 August 2020, the Social Welfare (Covid-19) (Amendment) Act 2020 was signed into law. The 2020 Act created a specific statutory scheme in relation to the Covid PUP. It is notable that the 2020 Act refers to the previous Covid PUP Scheme as "the payment known as the pandemic unemployment payment paid under section 202 [of the 2005 Act] in respect of that week".

Section 3(1) of the Finance Bill 2020 proposes to amend section 126 of the 1997 Act in order to allow for the taxation of the Covid PUP. Specifically, it adds the following to the list of payments which are to be treated as income for the purposes of assessing liability for income tax:

"(iib) the payments, commonly known as the pandemic unemployment payments, made under section 202 of the Act of 2005 on and after 13 March 2020 to the relevant date (within the meaning of section 7 of that Act),"

"(iic) Covid-19 pandemic unemployment payment (within the meaning of the Act of 2005),"

Further, section 3 of the 2020 Bill amends the table contained in section 126 of the 1997 Act (which lists the social welfare payments exempt from income tax) so that the line therein referring to the exemption for Urgent Needs Payment is followed by the caveat that the exemption does not apply to "the payments referred to in subsection (3)(a)(iib)".

Section 3(2) of the 2020 Bill provides that the rules created by section 3(1) regarding the taxation of the Covid PUP prior to the introduction of a specific statutory basis for the payment "shall be deemed to have come into operation on and from 13 March 2020". Section 3(3) provides that the rules regarding the taxation of the Covid PUP paid pursuant to the legislative scheme introduced by the Social Welfare (Covid-19) (Amendment) Act 2020 "shall be deemed to have come into operation on and from 5 August 2020".

The effect of the section 3 of the 2020 Bill is to amend section 126 of the 1997 Act so as to allow for the taxation of the Covid PUP. These rules apply retrospectively to claims for the payment since its introduction in March 2020.

Information available to Claimants re potential taxation of the Covid PUP

Section 126 of the Taxes Consolidation Act 1997 provides that only social welfare payments paid under the Social Welfare Consolidation Act 2005 may be subject to taxation. As noted above, no legislation was introduced in relation to the Covid PUP scheme until 5 August 2020. Prior to the introduction of this legislation, no information published by the Department of Social Protection indicated that the payment was being paid pursuant to the Social Welfare Consolidation Act 2005. The first reference to the Covid PUP having been paid pursuant to the 2005 Act was contained in the Social Welfare (Covid-19) (Amendment) Act 2020. The 2020 Act refers to the Covid PUP scheme in place from 13 March 2020 to 5 August 2020 as "the payment known as the pandemic unemployment payment paid under section 202 [of the 2005 Act]". Prior to the publication of that legislation, there had been no reference to the Covid PUP as having been paid under the 2005 Act and it appeared that it had been paid pursuant to a purely administrative, non-legislative scheme. Prior to 5 August 2020, then, claimants cannot have

been expected to know that the payment had been paid pursuant to the 2005 Act and was therefore subject to taxation.

Further, it can be argued that the characteristics of the Covid PUP scheme between 13 March 2020 and 5 August 2020 are such that the payment could not have been paid pursuant to the section 202 of the 2005 Act. Per section 189 of the 2005 Act, in order for the Department to award an SWA payment (including a payment under section 202 of the 2005 Act), they must have conducted a means test prior to awarding the claim which established that a claimant's means are insufficient to meet their needs. The Covid PUP was never subject to any form of means testing nor were claimants ever asked to declare that their means were insufficient to meet their needs. If the Covid PUP cannot be properly categorised as having been paid pursuant to section 202 of the 2005 Act during the period 13 March 2020 to 5 August 2020, it follows that Covid PUP payments during that period cannot be subject to taxation pursuant to section 126 of the 1997 Act.

Notwithstanding the absence of information as to the legislative basis for the Covid PUP scheme during the period 13 March 2020 to 5 August 2020, there was also a dearth of specific information in relation to whether the payment would be subject to taxation. Prior to the enactment of 2020 Act, claimants can only be expected to have relied on the official information published by the Department of Social Protection in order to ascertain whether the payment would be subject to taxation. However, neither the application form for the payment nor the webpage in relation to the payment on gov.ie offered any guidance in this regard.

The application form for the Covid PUP contains no specific references to the possible or potential liability to taxation of the payment. Between 24 and 29 March 2020 the following sentence was added to the Covid PUP information page on gov.ie (and has remained on that page since): "The COVID-19 Payment Unemployment Payment will replace your employment income and will be regarded by the department as equivalent to employment income". This statement, however, cannot be construed as putting recipients on clear notice that the Covid PUP would be taxed. While some social welfare payments are considered "income" for the purposes of the tax code, social assistance payments are generally exempt from being subject to taxation. The Covid PUP scheme has characteristics of both social insurance payments and social assistance payments. Like social insurance payments, the payment is not means tested. Like social assistance payments, there is no requirement to have made a certain number of PRSI contributions in order to access the payment. It is therefore the case that, based on the official information published in relation to the scheme, claimants could not have known how the payment was categorised for social welfare purposes and whether it would be subject to income tax as a result.

In answering a parliamentary question in relation to the whether the Covid PUP would be subject to income tax on 20 May 2020, the Minister for Finance stated as follows:

"Payments made under the Pandemic Unemployment Payment (PUP) Scheme are an income support and share the characteristics of income. Other income earners in receipt of comparable "normal wages" are taxable on those wages. In the interest of equity, therefore, payments made under the PUP scheme are subject to income tax. However, tax will not be collected in real-time while the scheme is in operation. In the case of the PUP, the taxation position will follow the general taxation rule for social welfare payments and, thus, while liable to income tax, the payments will be exempt from PRSI and the Universal Social Charge."

However, this statement was subsequently contradicted by the contents of the Social Welfare (Covid-19) (Amendment) Act 2020 which described the original Covid PUP scheme as having been paid pursuant to section 202 of the 2005 Act (a category of payment which is specifically exempt from income tax). Further, the official information published in relation to the Covid PUP subsequent to the Minister's statement remained unclear as to the liability to tax of the payment.

It follows, that claimants who were entitled to rely on the official information published in relation to the PUP (as opposed to the political statements in relation to the matter), could not have been aware that the payment would be subject to taxation.

Issues Arising

FLAC has concerns about the fairness of retrospectively subjecting the Covid PUP to assessment for income tax in circumstances where it was not clear to claimants that the scheme would be subject to income tax prior to the introduction of the Finance Bill 2020.

Indeed, an analysis of the relevant legal and constitutional principles suggests that the proposed retrospective application of section 3 of the Finance Bill 2020 may constitute an unconstitutional interference with the rights of claimants of the Covid PUP.

Retrospective Legislation and Property Rights

Article 40.3.2° of the Constitution requires the State to protect the property rights of citizens from “unjust attack”. Claims for the Covid PUP were paid on a weekly basis to those who fulfilled the relevant criteria from March 2020. Once the conditions of the payment are fulfilled by the claimant and the payment received, the right to the money received may be characterised as a “vested property right” which is entitled to the constitutional protection of Article 40.3.2°. The Courts have interpreted the constitutional protection of property rights as giving rise to a general prohibition on retrospective legislation which interferes with those rights.

Further, in considering the constitutional protection of property rights and how that protection interacts with the reference in Article 43.2 of the constitution to “the principles of social justice”, the authors of *Kelly: The Irish Constitution*¹ highlight the analysis of the Supreme Court in *Re Article 26 and the Health (Amendment) (No 2) Bill 2004*². Specifically, they note that, in that case, it was held that “[t]he property of persons of modest means must necessarily... be deserving of particular protection, since any abridgement of the rights of such persons will normally be proportionately more severe in its effects”.

It is clear that many claimants for the Covid PUP suffered significant financial hardship as a result of the Covid-19 pandemic. Indeed, the payment was introduced specifically to mitigate that hardship. It would seem therefore that the property of those persons, in the form of their vested right to the Covid PUP, may be considered as deserving of “particular protection” under the Constitution. It follows that any analysis in this regard should also consider whether a measure which retrospectively interferes with property rights is proportionate. It is notable, then, that the tax liability imposed by section 3 of the 2020 Bill may disproportionately affect those who have suffered the greatest financial hardship as a result of the Covid-19 pandemic. Such claimants may now be faced with an unexpected tax liability without having been afforded the opportunity to plan around same. While FLAC acknowledged that it is permissible for the Oireachtas to prospectively subject the Covid PUP to income tax and the Oireachtas has a wide discretion in relation to the financial measures deemed necessary for the economic wellbeing of the State, that discretion is significantly trammelled by the constitutional consideration involved when introducing legislation with retrospective effect.

The Courts have yet to consider the provisions of Article 40.3.2° in the context of retrospective tax legislation. However, the analysis of another author, writing in the *Irish Tax Review*³, suggests that there are only two limited situations in which retrospective tax legislation can be held to accord with the provisions of the Constitution:

“The first is where the provision is what is described as ‘curative’ legislation. That is, legislation that will ratify prior official conduct or make a remedial adjustment in an administrative scheme. In such situations, the legislature is simply removing unintended statutory flaws and giving full effect to the legislative intent behind the initial or original legislation.

The second situation is where the legislation is an ‘objective imperative’ to prevent the State going bankrupt. Part of a taxpayer’s property rights is the right to know where he or she stands. That is, a right to know in advance what the tax implications of his or her actions will be. Any interference with that right should

1 *Kelly: The Irish Constitution* (5th Edition, Bloomsbury, 2018) at [7.8.75].

2 *Re Article 26 and the Health (Amendment) (No 2) Bill 2004* [2005] 1 IR 105 at 202.

3 Brady, P., *The Constitution and Retrospective Tax Legislation*, Ir. T.R. (2009), 22(5), 93-96.

only be justified when prospective legislation is inadequate to prevent an extreme financial crisis for the State. The latter situation could arise where, for example, a major tax charging provision was found void from its enactment”

It is doubtful that the circumstances in which the retrospective provisions of section 3 of the Finance Bill 2020 have been introduced could properly be placed in either of those categories.

In all the circumstances, there would appear to be significant questions to be addressed as to whether the retrospective provisions of section 3 meet the constitutional threshold necessary to allow for introduction of such a measure.

Free Legal Advice Centres
November 2020

Submissions received from Aer Lingus Staff

SPCRDI-r-024
06/11/2020

From: MEGAN FORREST <meganw80@hotmail.com>
Sent: Friday 6 November 2020 16:43
To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>
Subject: Fwd:

Friday, November 6, 2020 4:39:57 PM
To: spcri@oireachtas.ie <spcri@oireachtas.ie>
Subject:

Dear Sir/ Madam,

I hope this email finds you well. My name is Megan Forrest and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Megan

Jack Hackett <jackhackett10@live.co.uk>
Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>; Denis Naughten Denis.Naughten@oireachtas.ie
Fri 06/11/2020 18.47

SPCRDI-s-002

Dear Sir/ Madam,

I hope this email finds you well. My name is jack hackett and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Jack

SPCRDI-s-003

Karen Oneill karenon26@gmail.com

Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Fri 06/11/2020 19:36

Dear Sir/ Madam,

I hope this email finds you well. My name is Karen Jones and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Karen Jones

From: Geraldine Walsh <geraldineannwalsh@gmail.com>

Sent: Friday 6 November 2020 20:27

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Impact of operation of twss

Dear Sir/ Madam,

I hope this email finds you well. My name is Geraldine Walsh and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Geraldine Walsh

From: conor boyd <conorboyd93@gmail.com>

Sent: Friday 6 November 2020 20:11

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Money That we deserve in our bank

Dear Sir/ Madam,

I hope this email finds you well. My name is Conor Boyd and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Conor Boyd

SPCRDI-s-006

jake allen <jakeallen011@gmail.com>

Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Fri 06/11/2020 23:09

Dear Sir/ Madam,

My colleagues have written to Denis Naughten as this email was not working so please ask Denis to check his email for submissions please.

I hope this email finds you well. My name is Jake Allen and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Jake

jake allen <jakeallen011@gmail.com>

Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Mon 09/11/2020 13:15

Hi Ailish,

Thank you for your response. I have attached two pay-slips to this email.

One pay-slip is from the 23/05/2019. This pay-slip shows a true reflection of my earnings while i'm in full employment with aerlingus. Please note the net pay which is highlighted.

The second pay-slip is from 27/08/2020. This pay-Slips shows how Aer Lingus operated the TWSS while we were on 30% pay. As you can see i only received €449 (244.50 / per week) in covid payment due to the fact January and February were used as deciding months to calculate how much covid pay we were entitled to. On this pay slip you can see aer lingus topped up my pay and i still did not received €700 for a fortnight pay (€350 / week) and I was working on the front line during the pandemic whilst those on the PUP were entitled to more.

As you can see that I have been loosing out on at least €1055 per fortnight comparing my 30% pay to my regular pay in 2019 due to how the TWSS was operated. This is a huge loss of earnings for someone who was still working during the pandemic. You can also see how the deciding months of January and February negatively impacted me by leaving me entitled to less than €350 covid payment a week as I was not employed by aer lingus in January and February.

You can also see that basing the TWSS on my basic pay does not show a true reflection of my earnings as there is a huge difference in my basic pay and net pay with various payments we received on top of our basic pay as cabin crew.

This is why Aer Lingus workers have been seeking social welfare support whilst on the TWSS because of how negatively impacted we were by the operation of the TWSS. Even though we were still working and operating flights we were down a huge sum of money because of how the scheme was operated and also how Aer Lingus operated the scheme.

I would ask you please go attach this email along with the supporting documentation to my submission email as I feel this really shows how badly impacted myself and the rest of my colleagues in Aer Lingus by the operating of the TWSS.

Thank you.

Kind Regards,
Jake

SPCRDI-s-007

Timmy Doyle <totsd2001@yahoo.co.uk>

Social Protection, Community and Rural Development and the Islands spcri@oireachtas.ie

Fri 06/11/2020 23:17

Dear Sir/ Madam,

I hope this email finds you well. My name is Tim Doyle and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Tim Doyle

SPCRDI-s-008

Ciara Smith <Ciara.Smith@aerlingus.com>

Social Protection, Community and Rural Development and the Islands spcri@oireachtas.ie

Fri 06/11/2020 23:18

Dear Sir/ Madam,

I hope this email finds you well. My name is Ciara Smith and I am a Senior Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated within the month on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Ciara Smith

SPCRDI-s-009

Dwane Kelly <dwaneKelly17@gmail.com>

Social Protection, Community and Rural Development and the Islands spcri@oireachtas.ie

Fri 06/11/2020 23:24

Dear Sir/ Madam,

I hope this email finds you well. My name is Dwane Kelly and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Thank you.

Best Regards
Dwane Kelly.

SPCRDI-s-010

Jaime Ortiz Mangado jortiz81@hotmail.com

Social Protection, Community and Rural Development and the Islands spcri@oireachtas.ie

Fri 06/11/2020 23:2

Dear Sir/ Madam,

I hope this email finds you well. My name is Jaime Mangado and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Jaime Ortiz Mangado

SPCRDI-s-011

Cara Wall carahargraves@gmail.com

Social Protection, Community and Rural Development and the Islands spcri@oireachtas.ie

Fri 06/11/2020 23:29

Dear Sir/ Madam,

I hope this email finds you well. My name is Cara and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the Minister of Social Protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Cara Wall
Donacarney
Co. Meath

SPCRDI-s-012

Lorna Twomey <lornactwomey@gmail.com>

Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Fri 06/11/2020 23:30

hope this email finds you well. My name is Lorna Twomey and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Lorna Twomey

SPCRDI-s-013

Rachael Fagan fagan.rachael@gmail.com

Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Fri 06/11/2020 23:30

Dear Sir/ Madam,

I hope this email finds you well. My name is Rachael Fagan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Rachael Fagan

From: **Jacqui Tolan** <aljack.jt@gmail.com>
Date: Fri, 6 Nov 2020, 17:24
Subject: Wages and impact on them
To: <Denis.Naughten@oireachtas.ie>

Dear Sir/ Madam,

I hope this email finds you well. My name is Jacqui Tolan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Jacqui Tolan

From: Angel Garcia Abellan <angelgarabe@hotmail.com>

Sent: Friday 6 November 2020 23:31

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 PUP/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Angel Garcia Abellan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

Up until February 10th I was a seasonal worker for Aer Lingus. This means my contract with Aer Lingus was for the peak months of business which runs from March up until November. Every year I was temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November and December and from my return to work on the 10th of February as full time permanent staff (a total of €824.80 from January 1st until February 29th) and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in a way that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

As a result of being put on a J9 PRSI Class for the duration of the TWSS and the lack of help from the Department of Employment Affairs and Social Protection together with the lack of help from my employer, I was unable to claim Short Time Work Support for the period 30/03/2020 until the 01/09/2020 when the switchover to the EWSS took place, whilst my salary was drastically reduced to 50% and further to 30% from June 23rd.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Angel Garcia Abellan.

From: Grace Mason <gracemason@hotmail.co.uk>

Sent: Friday 6 November 2020 23:42

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: "Submissions on Covid-19 pandemic unemployment payment/ TWSS"

Dear Sir/Madam

I hope this email finds you well. My name is Grace Mason and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew Member for Aer Lingus my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during this pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result. I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole , and my employer topped up my payment appropriately, the payment I received whilst on the TWSS May have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards
Grace Mason

From: rozelle cronin <housebarbie@yahoo.co.uk>
Sent: Saturday 7 November 2020 01:05
To: rozelle cronin <rozelle.cronin@gmail.com>; Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>
Subject: Re: Fwd: Impact of operation of TWSS

On Saturday, November 7, 2020, 1:03 a.m., rozelle cronin wrote:

From: rozelle cronin
Date: 6 November 2020 at 17:23:36 GMT
To: Denis.Naughten@oireachtas.ie
Subject: Impact of operation of TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Rozelle Cronin and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Rozelle

From: Norma Galvin <normag.flp@gmail.com>

Sent: Saturday 7 November 2020 01:32

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Norma Cronin and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Norma Cronin

From: Kadie Sweetman <kadie.sweetman@gmail.com>

Sent: Saturday 7 November 2020 01:53

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Kadie Sweetman and I am a Cabin Crew Member with Aer Lingus for 7 years now. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Kadie Sweetman

From: **Lisa Carty** <lisacarty16@gmail.com>

Date: Fri 6 Nov 2020 at 13:14

Subject: Impact of operation of TWSS

To: Denis.Naughten@oireachtas.ie <Denis.Naughten@oireachtas.ie>

Dear Sir/ Madam,

I hope this email finds you well. My name is _____ and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Lisa Carty

From: ann-marie leahy <ann_marie_leahy@yahoo.ie>

Sent: Saturday 7 November 2020 05:49

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Unemployment payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Ann-Marie Leahy and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Ann-Marie Leahy

From: Amy Mulligan <amymulligan94@hotmail.com>

Sent: Saturday 7 November 2020 07:03

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>; Denis Naughten <Denis.Naughten@oireachtas.ie>

Subject: Submissions on Covid19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Amy Mulligan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Amy Mulligan

From: Geri Cunningham <gericunningham34@gmail.com>

Sent: Saturday 7 November 2020 07:05

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submission on TWSS operation

Dear Sir/ Madam,

I hope this email finds you well. My name is Geraldine Cunningham and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February I was on additional maternity leave so these months do not actually reflect what I earn when I am in normal employment of Aer Lingus. As a result of this I initially was not entitled to any subsidy until a change came on 12th June. When announced it stated anyone on maternity etc was entitled to receive the TWSS and backpay retrospectively. I received only 2 subsidy payments of 0.51cent each in my last 2 payslips of August. As you can imagine being on 30% pay since June this situation has been incredibly frustrating.

During this time i thankfully was able to claim the short time work payment. But as stated by revenue it was fine to claim short time hours whilst receiving the TWSS so i do believe i am still owed the full TWSS payment.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards, Geraldine
Cunningham

From: **Sandra Carney** <sandracarney1@gmail.com>
Date: Fri 6 Nov 2020 at 18:16
Subject: Impact of the TWSS
To: Denis.Naughten@oireachtas.ie <Denis.Naughten@oireachtas.ie>

Dear Sir/Madam

I am a member of cabin crew for Aerlingus. I am writing to you to inform you of the impact the Twss had on me and my family.

From the 30/03 I was on 30-50% of my wages while my employer paid me €350.

I was still working reflecting pay for this period which only amounted to the TWSS without a top up from my employer.

This was not a reflection of my salary in any of my previous years of employment and caused great anguish and financial hardship to me and my family.

Could you please inform the minister for Social protection of this.

This would be very much appreciated by me and some of my colleagues.

Kind Regards
Sandra Carney

From: Charley Molloy <charleymolloy@hotmail.com>

Sent: Saturday 7 November 2020 08:34

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on covid 19 pandemic unemployment payment / TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Charley Molloy and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Charley

From: scott waters <scottairline@outlook.com>

Sent: Saturday 7 November 2020 09:34

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Social welfare

Dear Sir/ Madam,

I hope this email finds you well. My name is Scott Waters and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Scott Waters

From: Meg grog <meggrogan14@gmail.com>

Sent: Saturday 7 November 2020 09:52

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on COVID 19 pandemic unemployment payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Megan Grogan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Megan Grogan

From: Giulia Angellotti <giulia_angellotti@hotmail.it>

Sent: Saturday 7 November 2020 10:31

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submission on COVID-19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Giulia Angellotti and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Giulia Angellotti

From: Anne Henry <ahenry.irl@gmail.com>

Sent: Saturday 7 November 2020 10:33

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>; ruth coppinger <ruthcoppinger@gmail.com>; Denis.Naughtan@oireachtas.ie; Regina Doherty <Regina.Doherty@oireachtas.ie>; Minister for Social Protection, Community & Rural Development & Islands (Phone Listing) <minister@welfare.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/Madam,

I hope this email finds you well. My name is Anne Henry and I am Senior Cabin Crew with Aer Lingus. I am writing to inform you on how I have been disproportionately financially impacted by the operation of the Temporary Wage Subsidy Scheme.

Due to the Twiss calculations being attached to basic pay, the resulting value of TWSS did not approach 80% of normal income even at 50% let alone at the 30% payment the company was allowed to calculate. Much of income is flight related, as flights did not operate income is disproportionately impacted, even with an added sum adjusted in averaging earlier payslips for Jan/Feb 2020, the quietest months on the schedule.

Perhaps if the decision was made on an average of my earnings for 2019 as a whole and my employer topped up my payments more appropriately, the payment I received whilst on the TWSS may have been a truer reflection of my actual earnings.

It is further complicated by the fact that I am close to the required retirement age. I have asked to remain on my current contract to at least 67. I have been very properly informed that it would be dependent on circumstances at retirement date. I would obviously need guarantees in order to plan pension payments to make up for uncertainty, payments had to be reduced because Aer Lingus was allowed to interpret and use TWSS in the way that it did, with payments still outstanding from MARCH to SEPTEMBER as of November 2020-8 MONTHS late.

Furthermore Ireland lags behind EU law in relation to the employees right to remain in employment. I find it difficult to understand, as this would help take strain off both state and private pensions.

This adjustment has been allowed for the public service. Whilst the government has only PAUSED the extension of the eligibility for State Pension due to pressure from Age Action, I may not be eligible for the state pension until 67. It is essentially a 5 FOLD DISADVANTAGE as I see it for me. Severance is a hobson's choice.

1. Much reduced earnings whilst on TWSS way below 80% giving a negative effect on pension both from the company and my own AVC contributions.
2. The outstanding TWSS payment not resolved pre SEVERANCE. Waiting does not pay bills.
3. No commitment to allowing me to remain, no time available to negate the disadvantage of point 1, through increasing pension payments via AVCs.
4. A continuing threat that the state pension age will move from age 66 to 67.
5. Being in receipt of Job Seekers Benefit already, will impact on the number of days (234)presumably, given that I have been in receipt already. This will run out before my 66th birthday let alone my 67th as I read citizens advice. I would like clarification on this.

Non payment or allowing disputes to arise causes unnecessary drama and unending discussion on something that has been well paid for. In my case for almost 43 years. I really wonder whose best interests are held foremost in our political forums.

1. I would like to know if my March to September payment remains live should I take Severance.
2. I again ask for clarification on the duration for me of job seekers' benefit given my closeness to retirement and the fact that, the payment has already begun.

Kind Regards,
Anne Henry

From: Eimear Shiels <eimearshiels@gmail.com>

Sent: Saturday 7 November 2020 10:59

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on COVID-19 Pandemic unemployment benefit/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Eimear Shiels, I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Eimear Shiels

From: Meabh Gallogly <meabhgallogly@gmail.com>

Sent: Saturday 7 November 2020 11:53

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 pandemic unemployment payment / TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Meabh Gallogly and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Meabh Gallogly

From: rachaelgreen@live.ie <rachaelgreen@live.ie>

Sent: Saturday 7 November 2020 11:54

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid 19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Rachael Green and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Rachael Green

From: Sophie markham <sophiem06@hotmail.com>

Sent: Saturday 7 November 2020 12:09

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: "Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Sophie Markham and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Sophie Markham

From: Megan Lee <meganlee093@gmail.com>

Sent: Saturday 7 November 2020 12:16

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Megan Lee and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind regards,
Megan Lee.

From: Francesca Di Remigio <cescadiremigio@gmail.com>

Sent: Saturday 7 November 2020 12:55

To: Denis Naughten <Denis.Naughten@oireachtas.ie>; Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sirs and Madames,

I hope this email finds you well.

My name is Francesca Di Remigio and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS. Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

The Kindest Regards

Francesca Di Remigio

From: **Kathleen Doherty** <katleendoherty@gmail.com>

Date: Fri 6 Nov 2020 at 19:05

Subject: TWSS

To: <denis.naughten@oireachtas.ie>

Re: submissions on Covid-19 pandemic unemployment payments TWSS

Dear Sir/Madam

I hope this email finds you well. My name is Kathleen Doherty and I am a cabin crew member with Aerlingus. I am writing to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that TWSS was based on my basic pay. As a cabin crew member for Aer lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic ,the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80 % of my normal wage whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my payment appropriately , the payment I received whilst on the TWSS May have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer lingus.

Kind regards

Kathleen Doherty

From: Blathnaid O'Connor <blathnaidoconnor28@gmail.com>

Sent: Saturday 7 November 2020 13:50

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Blathnaid O Connor and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Blathnaid O Connor

From: linda MacAvin <lindamacavin@hotmail.com>

Sent: Saturday 7 November 2020 14:08

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submission on COVID -19 pandemic unemployment payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Linda MacAvin and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards, Linda

MacAvin

From: ainedunne55 <ainedunne55@gmail.com>

Sent: Saturday 7 November 2020 14:20

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: aerlingus cabin crew

Dear Sir/ Madam,

I hope this email finds you well. My name is Aine Dunne and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Aine

From: Julie Keane <juliekeane7@gmail.com>

Sent: Saturday 7 November 2020 15:19

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: April- August lack of STWS

Dear Sir/ Madam,

I hope this email finds you well. My name is Julie Keane and I am a Cabin Manager with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Julie Keane Cabin Service Manager
Aer Lingus

From: patrick Mulhair <paddyben1996@gmail.com>

Sent: Saturday 7 November 2020 15:20

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid 19 PUP/TWSS

****PSC CONTRACTS****

Dear Sir/ Madam,

I hope this email finds you well. My name is Patrick and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Patrick Mulhair

From: Rebecca Gilligan <rebecca.m.gilligan@gmail.com>

Sent: Saturday 7 November 2020 16:16

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on COVID-19 pandemic unemployment payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Rebecca and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Rebecca Gilligan

From: Shauna Murphy <shaunamurphy253@gmail.com>

Sent: Saturday 7 November 2020 16:27

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject:

Dear Sir/ Madam,

I hope this email finds you well. My name is Shauna and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Shauna Murphy

From: Lauren Scott <laurenscottstm@gmail.com>

Sent: Saturday 7 November 2020 19:11

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Lauren Scott Behan, and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Lauren Scott Behan

From: Kevin Keenan <kevin.keenan.90@gmail.com>

Sent: Saturday 7 November 2020 20:09

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Kevin Keenan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer very quickly introduced changes to my working hours & pay reducing both to initially 50% and then a further reduction to 30%. Whilst in receipt of 50% of my basic pay I received a top up from Aer Lingus of only €35.76 per week and this was stopped when we were reduced to 30% of our pre covid salary based on earnings in 2019. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS. When I initially heard of this scheme I was under the assumption that my employer was getting this €350 per week per eligible employee and then they were to top it up to ensure we were earning at least 80% of our pre covid salary. I feel Aer Lingus were clearly very smart in their application of the scheme, but it is the employees such as myself that have suffered because of this. Aer Lingus's application of this scheme have, in my opinion, led to the delay in social welfare payments which I am entitled to and this has caused untold damage on my mental health. I have had sleepless nights worrying over loans I have to repay and through all of this have found my Bank, AIB, and my Local INTREO office, Dundalk, to be the most empathetic and supportive to me not my employer.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Kevin Keenan

From: Ross Kennedy <rosskennedy94@gmail.com>
Sent: Saturday 7 November 2020 23:22
To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>;
Denis Naughten <Denis.Naughten@oireachtas.ie>
Subject: Impact of operation of TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Ross Kennedy and I am a Senior Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €247 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Yours sincerely,
Ross Kennedy

From: Chloe Gaynor <chloegaynor9968@gmail.com>

Sent: Sunday 8 November 2020 10:12

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on covid 19 pandemic unemployment payment/TWSS by Nov 16th

Dear Sir/ Madam,

I hope this email finds you well. My name is Chloe Gaynor and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Chloe Gaynor

From: Sergi Perdiguero <sergioperdiguero@corullon@gmail.com>
Sent: Sunday 8 November 2020 11:52
To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>
Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Sergi Perdiguero and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Sergio

From: Lauren <laurenbyrne63@gmail.com>

Sent: Sunday 8 November 2020 12:46

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/ TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is _____ and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Lauren Byrne

From: Ivana Ricchetti <Ivana.Ricchetti@aerlingus.com>

Sent: Sunday 8 November 2020 15:06

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Cc: Denis Naughten <Denis.Naughten@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Ivana Ricchetti and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,

Ivana Ricchetti

From: Niamh Connolly <niamhconnolly1989@gmail.com>

Sent: Monday 9 November 2020 10:08

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on COVID 19 Pandemic Unemployment Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Niamh Connolly and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Niamh Connolly

From: Eva Fallon <evafallon17@icloud.com>

Sent: Monday 9 November 2020 11:14

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/Madam,

I am Cabincrew with Aerlingus for the last 20 years. Over the years I have seen a lot of turbulent times but nothing like this. I'm emailing you to inform you of how I have been impacted by this whole crisis. I am fortunate enough that myself and my family are healthy. The greatest Impact of this pandemic has been the financial impact on me. The TWSS was based on my basic pay. As cabincrew our pay is a very complex issue. As we earn our basic pay but because we work shift work we get credits (these depend on the time etc you check in for work). I received the 350€ weekly from the government which I was grateful for but my employer moved straight away to cutting our salaries by 50 % and further down the road to 30% so they did not have to top us up. Also out of the €700.00 forth nightly salary I had paid my trade union fees, credit union and health insurance. My pension was not paid for by me nor my employer. So if I was unfortunate enough to have no work my salary for the forthright was hugely impacted as I had no credits, allowances or commission. As a result I received a lot less then 80% of my normal pay while on the TWSS. Perhaps if the decision was made on the average of my earnings from 2019 as a whole and topped up by my employer appropriately it would have been a true reflection of my earnings.

At the minute we are getting the EWSS and a top up from the Social welfare. I don't understand why did this not happen with the TWSS. I would really appreciate if the matter could be sorted for myself and my Colleagues with the Minister for Social Protection. As there is so much conflicting information going around. Some people are saying that we are entitled to a back dated pay out from the Social Welfare some say not.

Thank you for your time.

Regards,

Eva Fallon

From: **Ashleigh Daly** <ashleighdaly87@gmail.com>

Date: Fri 6 Nov 2020, 22:02

Subject:

To: <Denis.Naughten@oireachtas.ie>

Dear Sir/ Madam,

I hope this email finds you well. My name is _____Ashleigh daly___ and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Ashleigh Daly

From: ruth kennedy <ruthk_100@icloud.com>

Sent: Saturday 7 November 2020 07:29

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on c19 PUP /twss payment

Dear Sir/ Madam,

I hope this email finds you well. My name is ruth Whelan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week.

As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Ruth Whelan

From: Gemma Mcenery <gemmamcenery@yahoo.com>
Sent: Wednesday 11 November 2020 12:44
To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>;
Denis Naughten <Denis.Naughten@oireachtas.ie>
Subject: Submissions on Covid Payment/TWSS

Dear Sir/ Madam,

I hope this email finds you well. My name is Gemma McEnery and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

From the 1st September to the 30th September I was paid 180.63 basic pay per week which is less than unemployment benefit, by Aer Lingus as they determined this was 30% of my earnings. They also made it extremely difficult for me to get any help from the DEASP by refusing to sign any documentation required by the DEASP, it is illegal for an employer to do this. I didnt receive any TWSS or EWSS for September.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards,
Gemma McEnery

From: Almudena Arroyo

Sent: Thursday 12 November 2020 00:31

To: Denis Naughten ; Social Protection, Community and Rural Development and the Islands

Subject: Cabin crew

To whom it may concern,

I hope this email finds you well.

My name is Almudena Arroyo and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme. I am a seasonal worker for Aer Lingus. This means my contract with Aer Lingus is for the peak months of business which runs from March up until November. Every year I am temporarily laid off for 2/3 months outside of the summer schedule. The decision to use January and February to calculate how much I would be entitled to on the TWSS has had a huge negative impact on what I received in subsidy. During the months of January and February the only pay I received from Aer Lingus was commission and pay in arrears from the months of November December and does not actually reflect what I earn when I am in employment of Aer Lingus. As a result of this I received a lot less than €350 a week from the subsidy scheme which is not a true reflection of my wages. The TWSS was also based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. As a result I received a lot less than 80% of my normal wages whilst on the TWSS. Perhaps if the decision was made on an average of my earnings from 2019 as a whole and my employer topped up my pay appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind regards,

Almudena Arroyo.

From: Maureen Donnelly <info@minichefs.ie>

Sent: Thursday 12 November 2020 16:39

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 Pandemic Unemployment Payment/TWSS

Dear Sir/Madam,

I hope that this email finds you well. My name is Maureen Donnelly and I am a member of Cabin Crew with Aer Lingus. I am writing to inform you how the Temporary Wage Subsidy Scheme operation has impacted on me.

The TWSS was based on my basic pay. As a Cabin Crew Member for Aer Lingus, my pay is very complex in that we receive commission and various other payments, depending on what flights we have operated, on top of our basic wage. My employer paid me the €350.00 per week but didn't top this up. As there are very few flights operating during the pandemic, the usual commission and other additional, various payments I would normally receive are not forthcoming. As a result, I have been receiving a lot less than 80% of my normal wage while on the TWSS.

Maybe if a decision was made on the average of my earnings in 2019 and my employer had topped up my payment appropriately, this might have been a more accurate reflection of my actual earnings whilst receiving the TWSS.

Also, trying to apply for Job Seekers Benefit - to which we were entitled - was nothing short of a nightmare and added undue and unnecessary stress in already extremely difficult and challenging times. It was only when a forceful campaign of lobbying TDs and a very pro-active campaign by Ms. Ruth Coppinger, did our plight finally get recognition and was taken to the House by Ms Regina Doherty. However, we are now in a further battle to have the debacle of back payments resolved as we were left without any Job Seeker Benefit from March - September 01st inclusive. Personally, I say shame on Ms. Heather Humphries for kicking this particular can down the road and not addressing the issue as a matter of urgency. We fervently hope, 8 months later, with the efforts of Ms. Doherty, that these back payments will be paid before Christmas.

I would be grateful if you could bring this to the attention of the Minister of Social Protection on behalf of myself and my Aer Lingus Colleagues.

Yours faithfully,
Maureen Donnelly

From: Megan Finnegan <meganfinnegan98@gmail.com>

Sent: Sunday 15 November 2020 15:05

To: Social Protection, Community and Rural Development and the Islands <spcri@oireachtas.ie>

Subject: Submissions on Covid-19 PUP/TWSS Dear Sir/

Madam,

I hope this email finds you well. My name is Megan Finnegan and I am a Cabin Crew Member with Aer Lingus. I am writing to you to inform you how I have been impacted by the operation of the Temporary Wage Subsidy Scheme.

An issue that impacted me was that the TWSS was based on my basic pay. As a Cabin Crew member for Aer Lingus, my pay is very complex in that we receive commission and other various payments depending on what flights we have operated on top of our basic wage. My employer paid me €350 a week, not topping it up themselves. As there are very little flights operating during the pandemic, the usual commission and other various payments I would usually receive on top of my basic pay were not received from my employer. As a result I received a lot less than 80% of my normal wages whilst on the TWSS.

Perhaps if the decision was made on an average of my earnings from 2019 as a whole, and my employer topped up my payment appropriately, the payment I received whilst on the TWSS may have had a truer reflection of my actual earnings.

I would appreciate if you could bring this to the attention of the minister of social protection on behalf of myself and my colleagues in Aer Lingus.

Kind Regards Megan
Finnegan

Cuirfear fáilte roimh chomhfhreagras i nGaeilge