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Llywodraeth Cymru  
Welsh Government

Ein cyf / Our Ref: JH/PO/92/2023

The Lord Bellamy KC  
Parliamentary Under Secretary of State  
Ministry of Justice  
[contactholmemb@parliament.uk](mailto:contactholmemb@parliament.uk)

23 March 2023

Dear Lord Bellamy

In July 2022, we launched our Basic Income for Care Leavers in Wales pilot ('the pilot'). The pilot provides eligible care-experienced young people who turn 18 between 1 July 2022 and 30 June 2023 with a basic income payment of £1,600 per month, pre-tax, for 24 months from the month after their 18th birthday. HM Revenues and Customs and the Department for Work and Pensions confirmed that this Welsh benefit payment interacts with the UK Government tax and benefits system and is recognised as income. Young people will receive payments between August 2022 and July 2025, with different entry and exit points into the pilot for individuals according to their month of birth. Further information about the policy design is available online<sup>1</sup>.

As we are sure you will agree, care leavers have a right to be properly supported as they develop into independent young adults. Too many young people leaving care continue to face significant barriers to achieving a successful transition into adulthood than many of their peers. Whilst participation in the pilot is non-compulsory, we aim to maximise the opportunity to participate for as many of the eligible cohort as possible within its powers.

One emerging challenge that we have noted is with regard to the treatment of legal aid in the context of this pilot, for which we write today to seek clarity. There are two distinct challenges, firstly regarding the treatment of Unaccompanied Asylum-Seeking Children (UASC) and

<sup>1</sup> <https://www.gov.wales/basic-income-pilot-care-leavers-overview-scheme>

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

secondly the general treatment of recipients in instances where they may require civil and/or criminal legal aid.

### **Legal aid and Unaccompanied Asylum-Seeking Children (UASC)**

In line with the Welsh Government's Nation of Sanctuary approach and ethos to the fair treatment of refugees and asylum seekers, we want to ensure that UASC are supported to rebuild their lives and make a full contribution to Welsh society. We ensure that asylum seekers are not prevented from accessing appropriate Welsh Government schemes and benefits to support their integration and to prevent asylum seekers falling into destitution; the Basic Income for Care Leavers in Wales pilot is one such benefit. As such, should UASC meet the basic eligibility criteria of the pilot, they have the right to enrol and participate in the pilot.

Officials have been informed of concerns that participation in the pilot may impact on UASC's eligibility for legal aid, in particular the means testing element. Of course, each individual recipient may be at different stages of the asylum process, and some may have leave to remain. However, it is crucial that a unified approach to the treatment of UASC in the context of legal aid and the pilot is identified. One potential avenue that officials have explored is for Exceptional Case Funding, as introduced following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (under section 10). Section 10(3) of the Act allows for exceptional case determinations where: it is necessary to make legal services available because failure to do so would be a breach of Convention rights; or it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach. In line with Articles 2 and 6 of the European Convention on Human Rights (ECHR), Welsh Government consider that the provision of legal services for this cohort will be necessary and therefore such recipients should be excluded from any legal aid exemptions.

### **Other civil/criminal legal aid**

Alongside our specific concerns regarding the treatment of UASC in the context of legal aid, there is a broader concern about any recipient of the basic income who may require legal assistance for criminal or civil matters. Given the care-experienced background of the pilot's cohort, the need for family court hearings is one such example which may necessitate legal assistance during participation in the pilot. In the context of criminal legal aid, in our pilot, on entering remand/custody, payments to individuals will be suspended for the duration of their remand/custodial sentence<sup>2</sup>.

Welsh Government requests that the UK Government explore amending regulation 6(2) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (the 2013 Regulations) to provide that a person eligible for the Basic Income for Care Leavers in Wales pilot would be eligible for civil legal aid without paying any contributions.

In both scenarios outlined above, we further note regulation 17 of the 2013 Regulations, on deprivation or conversion of resources. For the purpose of the Basic Income for Care Leavers in Wales pilot, we are clear that no individual should remain on the pilot if their circumstances change in a manner by which their continued participation would make themselves worse off. Therefore, Welsh Government would not like to see individuals deemed to have deprived themselves of a resource in the scope of this regulation should the circumstances necessitate legal assistance and should they therefore decide to leave the pilot in order to access legal aid.

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<sup>2</sup> A full outline of this aspect of the pilot's policy design is available at: <https://www.gov.wales/basic-income-pilot-care-leavers-overview-scheme#103863>

We would be grateful if you could provide clarity on the following points:

- That the recipients of the Basic Income for Care Leavers in Wales pilot be exempted from the means-testing thresholds for legal aid (via amendment to regulation 6(2) of the 2013 Regulations), OR
- That UASC recipients' claims are exempted under Exceptional Case Funding.
- That any recipient withdrawing from the Basic Income for Care Leavers in Wales pilot will not be treated as having deprived themselves of any resources in any future claim for legal aid.

Yours sincerely



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