



Department
for Work &
Pensions

2nd Floor
Caxton House
Tothill Street
London
SW1A 9NH



11 September 2015

Dr. E.E. Carlyon
Senior Coroner for the County of Cornwall
The New Lodge
Newquay Road
Penmount
Truro TR4 9AA

Dear Dr Carlyon,

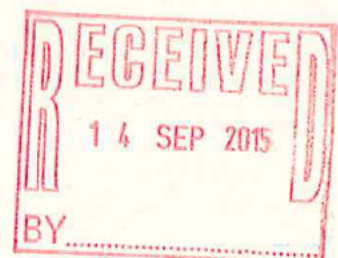
Re. Prevention of Future Deaths Report: Miriam Joyce Smith-Cox (deceased)

Please find enclosed the Department's response to the Prevention of Further Deaths Report dated 24 July 2015.

Yours sincerely,



DWP Legal Advisers – part of the Government Legal Department



DEPARTMENT FOR WORK AND PENSIONS

RESPONSE TO REGULATION 28 PREVENTION OF FUTURE DEATHS REPORT ON MIRIAM JOYCE SMITH-COX

Introduction

1. This report fulfils the Department for Work and Pensions' (DWP) duty to respond to a Prevention of Future Death report made under the Coroners (Investigations) Regulations 2013. The request for the report has arisen following an inquest on 20 July 2015, into the death of Ms Miriam Joyce Smith-Cox. Ms Smith-Cox was a long-term DWP benefit claimant who, in the course of her life, variously claimed Incapacity Benefit, Jobseeker's Allowance and Employment and Support Allowance depending upon the benefits available and her circumstances at the time. Ms Smith-Cox died as a result of injuries incurred falling down the stairs outside her flat.
2. The report is structured in two parts. The first describes the three benefits that Ms Smith-Cox had most recently claimed- Incapacity Benefit (IB), Employment and Support Allowance (ESA) and Jobseeker's Allowance (JSA) as well as explaining the Work Choice programme, and our policies for assisting with vulnerable claimants. The final part explains what happened in Ms Smith-Cox's case.

Incapacity Benefit

3. IB was a benefit that was introduced in 1995 and was normally paid to people of working age who could not work because of illness or disability and satisfied the National Insurance contribution conditions. DWP used the Personal Capability Assessment (PCA) to decide whether a claimant was incapable of work and therefore eligible for benefit. Claimants in receipt of Incapacity Benefit were also subject to regular reassessment through a PCA to determine whether they remained incapable for work. People who were incapable of work but could not satisfy the National Insurance conditions for IB could claim means-tested Income Support (IS) instead.
4. From 27 October 2008, IB was replaced by Employment and Support Allowance (ESA) for new claims. Existing claimants who were in receipt of IB/IS are gradually being reassessed under the Work Capability Assessment (WCA) to determine whether they are eligible for ESA or fit for work. The WCA is a more

robust functional assessment of eligibility than the PCA and is designed to measure the effects a condition has on a person's capability to work. Claimants who are found fit for work are not entitled to ESA, but may, where they meet the conditions of entitlement, claim JSA instead.

Employment and Support Allowance

5. ESA is a benefit paid to people of working age who have limited capability for work as a result of a health condition or disability. It was introduced in 2008 in place of Incapacity Benefit and certain other benefits paid on the ground of incapacity and severe disablement. ESA is designed on the principle that eligibility is based on the effects of a health condition or disability rather than on having a particular condition. With the right support claimants can therefore be expected to return to work once they have the capability to do so.
6. Section 1 of the Welfare Reform Act 2007 sets out the conditions a claimant must meet in order to be entitled to ESA. There are a number of conditions which must be met, including financial conditions. However, the primary condition is that the claimant must have "limited capability for work". Section 1(4) sets out that a person has "limited capability for work" if their capability for work is limited by their physical or mental condition, and the limitation is such that it is not reasonable to require them to work.

Claimant groups

7. DWP uses the Work Capability Assessment (WCA) to assess an individual's functional ability, focusing on what they can do, rather than what they cannot do. The assessment is not intended to be a measure of employability, but simply to measure how the claimant's ability to function is affected by their condition or disabilities.
8. The WCA allows three groups of people to be distinguished:
 - those who would be capable of work in spite of any health problems. This group is commonly called 'fit for work' (and should claim JSA)
 - those who, with additional support, could eventually return to work (the Work-Related Activity Group of ESA)
 - those with the greatest impairments or disablements who, at the present time, it would not be reasonable to expect to work (the Support Group of ESA)
9. The Support Group comprises claimants whose conditions mean that they have limited capability for both work and work-related activity (LCWRA) as measured against descriptors set out in Schedule 3 to the ESA Regulations 2008. These

are claimants who are most seriously affected by their disabilities or conditions and they are not expected to do anything to receive their benefit.

10. The Work Related Activity Group (WRAG) comprises those claimants whose conditions mean that they have limited capability for work (LCW), as measured against descriptors contained in Schedule 2 to the ESA Regulations, and it is considered that they should be able to return to the work place in due course. These claimants are generally expected to engage in work-related activity in order to receive their benefit.

Jobseeker's Allowance

11. Jobseeker's Allowance (JSA) is a benefit for people who are looking for work, and who do not have limited capability for work. It was introduced in 1996 replacing a complex system whereby those who were unemployed received Unemployment Benefit and/or Income Support depending on their circumstances.
12. Section 1 of the Jobseekers Act 1995 sets out the conditions a claimant must meet in order to be entitled to JSA. There are a number of conditions which must be met, including financial conditions. The key conditions are the so-called 'jobseeking conditions' – a claimant must be available for work, be actively seeking work and have a jobseeker's agreement with DWP. If a claimant does not comply with these conditions, then their entitlement to JSA will end
13. However, there are easements for claimants with a health problem/disability and they may restrict their availability in any way - provided the restrictions are reasonable in the light of their physical or mental health condition. The Government remains committed to supporting those who cannot work because of a health condition or disability and to help as many people as possible to find suitable work, stay in employment or keep them close to the labour market and move to employment as soon as possible.
14. A claimant's JSA payments will be stopped (sanctioned) if they refuse to do something they have been asked to do without a good reason, for example they turn down a job offer, fail to participate in an interview or in an employment programme. If a claimant is sanctioned, their benefit is not paid for a period; the length is determined by the type of failure and whether or not it is the first sanctionable failure.

Appealing a decision

15. Any claimant who is not happy with a decision can ask DWP to reconsider the decision within a month of the date of the decision – this includes decisions such as those who have been found "fit for work" at a WCA or where a sanction has been imposed on a JSA claimant. DWP will reconsider the claimant's case, and

respond with their decision in a Mandatory Reconsideration Notice. If a claimant disagrees with the Mandatory Reconsideration Notice, they can appeal against the decision to the First-tier Tribunal (Social Entitlement Chamber). The First-tier Tribunal consists of a judge and a medical representative (where appropriate). It is a free to access service, funded from the public purse.

Disability Employment Advisers

16. In many of our Jobcentres, we have Disability Employment Advisers (DEA) who offer specialist assistance to disabled people facing a more complex employment situation, mainly arising from their disability. A DEA will help the claimant identify a job goal linking the claimant's aptitudes and abilities to that goal, providing or sourcing the extra support or work experience required to help them find or keep a job, or which leads them towards their job goal. DEAs have in-depth knowledge of the local programmes, services and support organisations available for disabled claimants to address skills gaps or other issues.

17. A DEA can refer a claimant for an occupational health assessment, or seek the help of Work Psychologists to support the claimant if required. They can also advocate on behalf of the claimant with prospective employers, aiming to identify work solutions, overcoming or minimising any difficulties related to an individual's disability in the work place. The DEA can also refer claimants to a range of local programmes, including Work Choice.

Work Choice

18. Work Choice is a voluntary contracted specialist support programme that helps people with disabilities whose needs cannot be met through other employment programmes, Access to Work or workplace adjustments. This might be because they need more specialised support to find employment or keep a job once they have started work.

19. Work Choice providers such as Pluss support disabled people who have complex needs, primarily those who are more likely to need more intensive specialist support. The provision is tailored to meet an individual's needs. It focuses on helping individuals to reach their full potential and move towards being more independent. Work Choice also ensures employers get the support they need to employ more disabled people. Work Choice provision is open to all ESA and JSA claimants who could benefit from the assistance provided.

Safeguards for vulnerable claimants

20. DWP aim to identify and assist vulnerable individuals with complex needs who may require additional support. Our definition of vulnerability is: "an individual who is identified as having complex needs and/or requires additional support to enable

them to access DWP benefits and use our services". The aim of this approach is to ensure that the targeted additional support to individuals enables them to access benefits, use our services, and meet their individual responsibilities. "Vulnerability" is not treated as a static state; there are stages at which an individual may require extra assistance, and it is likely that they will move in and out of situations where they do/do not require support. DWP remains committed to ensuring that we identify these individuals and the situations in which they require assistance. The provision must, by its very nature, remain fluid and reactive, but DWP provides detailed guidance to assist work coaches and other members of staff in identifying those claimants who may be "vulnerable" and the type of support that they may require, from assistance in making a claim and proving eligibility for benefits to help with managing their finances and using banking services.

21. In the Devon, Cornwall and Somerset District, there is also a well established Vulnerable Customer Network, which provides a forum for wider consultation regarding "vulnerable" claimants, and to consider possible solutions for improving support for vulnerable claimants. It provides an opportunity for customer representative groups to feed back to DWP in order to help us enhance our service.

Ms Smith-Cox's case

Benefit claim history

22. Ms Smith-Cox started claiming benefits in the 1980s after holding down various jobs. We no longer have full records, but we understand that she was on various benefits, and became an Incapacity Benefit claimant in the mid 1990s. She undertook a PCA on 21 September 2005, and it was decided that Ms Smith-Cox did not meet the threshold for benefit to continue from 29 September 2005. Ms Smith-Cox appealed the decision, but the appeal was disallowed, and she no longer received benefit from 7 February 2006. There were special arrangements for IS to be paid where a person is appealing an IB decision. Regrettably we do not have details of this aspect of Ms Smith-Cox's claim history but we assume she also had a claim for IS, which also ended in February 2006. Thereafter she made a claim to JSA, and this was paid from 9 February 2006. Ms Smith-Cox was able to comply with her JSA responsibilities for the next 6 years, and was not disentitled or sanctioned during this period.
23. Ms Smith-Cox made a claim to ESA on 30 October 2012, closing her claim to JSA. She attended a face-to-face WCA on 12 May 2014 with a healthcare professional (HCP). The HCP did not award Ms Smith-Cox any points for any of the mental or physical health descriptors. On 28 May 2014 a DWP Decision Maker disallowed Ms Smith-Cox's ESA claim on the basis that she had scored no

points, and was not found to have limited capability for work. Ms Smith-Cox requested a mandatory reconsideration and this took place on 10 June 2014, but the decision was not revised. Ms Smith-Cox was advised of the outcome, her right to appeal the decision, and how to appeal the decision, but decided not to appeal.

24. Ms Smith-Cox then claimed JSA again from 28 May 2014 until 3 November 2014. She had 2 periods of sickness during this time; on the third period of sickness, as per the rules at that time, Ms Smith-Cox withdrew her JSA claim in order to make another ESA claim. She was in receipt of ESA and waiting for a face-to-face WCA when she died.
25. At no point during her JSA and ESA claims was she sanctioned or disentitled. This means that during her JSA claim, she was maintaining her obligations to be both available for and actively seeking employment on a weekly basis, and was fulfilling any other requirements imposed on her. In 2009, work coaches at the JCP helped Ms Smith-Cox to enhance her skills by referring her to the local Adult Education Centre 'Link into Learning' where she achieved Levels 1 and 2 Word Processing and Maths and English Level 3. She attended an appointment with the National Careers Service in July 2014 and agreed to attend a weekly Job Club from August 2014 to assist her with job search and work preparation activities and help in making applications.
26. We have also checked our records for the periods where she transferred between benefits, and on each occasion, the claims were processed quickly and efficiently, for example when she claimed JSA in 2014, her claim was made on 28 May 2014 and payment was made on 3 June 2014 (4 working days). We have not found any evidence in our system to support the assertion that her benefit "was stopped with no money coming in" – it is clear that her benefits were paid on a continuous cycle not exceeding a fortnight between each payment. At the time that Pluss refer to taking Ms Smith-Cox to a food bank (January 2015), Ms Smith-Cox was in receipt of ESA. We assume that if she was lacking money, it was a budgeting issue. We could have assisted Ms Smith-Cox with her budgeting if we had known about it, and this is also something that Pluss were equipped to assist with.

Further assistance

27. Ms Smith-Cox was a frequent visitor to Penzance Jobcentre Plus (JCP), was very well known and popular with many staff members, who had, on numerous occasions, assisted her with benefits advice and provided help in accessing entitlement. She had attended many appointments specifically to support her with regards to improving her job prospects and received advice and guidance to improve her health and wellbeing.

28. Ms Smith-Cox participated in the Work Programme from July 2011 to July 2013. When she returned to the JCP in July 2013, she saw a Disability Employment Advisor (DEA), who offered her specialist support to assist her to move closer to the job market, but Ms Smith-Cox turned down her offer. The DEA saw her again on 11 July 2014 to discuss her options as to whether to stay on JSA or to claim ESA because of her health. She then saw her on the 29 July 2014- Ms Smith-Cox informed us that her GP would not issue a fit note, and so she remained on JSA for the time being as without the fit note, she could not claim ESA. In order to assist her further, the DEA referred her to Pluss, one of our Work Choice providers. Providers like Pluss work on behalf of the Secretary of State to help support disabled people and those with health conditions who are more likely to need intensive specialist support to find a job.

29. The DEA felt that this personal assistance would benefit Ms Smith-Cox because of her mobility issues, personal presentation and health conditions. Although Ms Smith-Cox had a very positive attitude towards seeking and returning to work, with job goals to secure employment working with children or animals, it was recognised by both Ms Smith-Cox, her work coach and her DEA that she was at a disadvantage in finding and securing work because of her health conditions which impacted her appearance and personal hygiene. Ms Smith-Cox was in full agreement with her referral to Work Choice, and seemed positive about the offer to provide extra one-on-one help. As demonstrated by the evidence that Pluss provided, they adopt a holistic approach, and were trying to assist Ms Smith-Cox with all of the areas of her life which prevented her from returning to work, including asking for Social Services to intervene.

30. Whilst Ms Smith-Cox claimed JSA, she had to regularly attend the JCP to sign on, and staff would always take time to engage with her positively, treating her with dignity and respect and taking a full interest in her circumstances and any progress made. When she returned to ESA in November 2014, she no longer had to visit the JCP to sign on, and no conditionality requirements were placed on her.

31. Following a discussion between the DEA and Mr Perrin of Pluss on 7 December 2014, our DEA suggested convening a multi-agency review meeting to discuss Ms Smith-Cox's circumstances and living conditions. Pluss made a request in writing to Social services on 4 December 2014, but this did not take place. The JCP did not receive any contact from Social Services in relation to Ms Smith-Cox's circumstances.

Conclusion

32. We are content that in this particular case Ms Smith-Cox received extensive and committed assistance from DWP and its service provider, Pluss. Although the Secretary of State for Work and Pensions has no role in the provision of social

services or health, staff at the JCP and Work Choice provider did go beyond their statutory remit in their attempts to assist Ms Smith-Cox, including by trying to convene a multi-agency conference with Social Services. Additionally and importantly, at no point during her JSA and ESA claims was she left without benefit payments. She was a long-term benefit claimant who was very well known and popular with staff at Penzance JCP who assisted her on multiple occasions over the years with benefits advice and help in accessing the relevant benefits. She had attended many appointments specifically to support her with regards to improving her job prospects and received advice and guidance to improve her health and wellbeing. When Ms Smith-Cox accepted assistance from our DEA, she made substantial efforts to assist Ms Smith-Cox. Pluss were working on behalf of the Secretary of State for Work and Pensions to assist Ms Smith-Cox because she was identified by JCP as needing one-on-one support in order to overcome her barriers to work. Together we provided the support necessary to help Ms Smith-Cox progress towards finding work, and continually provided the benefits she needed to live on.