

Introduction

The Irish National Organisation of the Unemployed (INOUE) welcomes this opportunity to make a submission to the Department of Social Protection's proposed new Fraud and Control initiative. The INOUE is keenly aware of all of the changes underway within the Department and believes this initiative needs to be viewed within the light of these developments.

The Department of Social Protection is no longer just a provider of income and welfare supports but has responsibility for employment services and related supports for people of working age. This changes the nature of the relationship between the Department and the people who use their services: the relationship has moved beyond decisions to whether or not a person has an entitlement and if yes, to what; to a relationship whereby people in receipt of a Jobseekers payment are expected to engage with the Department in a more regular and pro-active manner.

There is little debate that the vast majority of people in receipt of payments have an underlying entitlement. Yet the INOUE is keenly aware that the term 'fraud' is used, and in particular in the media, as a catchall phrase for a wider range of issues arising from individual and official error; misunderstandings; and inadequate communication. All of this arises even though the percentage of actual fraud is very low compared to the numbers of people in receipt of payments. A more sophisticated breakdown and communication of data: error v fraud; individual v system error; overpayment due to misunderstandings / miscommunications v fraud would assist in a more informed debate: a debate which at present often serves to stigmatise unemployed people. This stigmatisation is further exacerbated by the tone of some official letters: a tone that does not lend itself to the development of a client / customer centred service.

Good and accurate information is critical to the development of a good working relationship between the Department and its client groups / customers / users of its services. Unemployed people must feel that the income and employment service they are being provided with has at its heart the meeting of their needs and supporting them to get into or back to paid employment as soon as possible. This ideal runs contrary to the reality the INOUE receives feedback on through the course of our work as the issue of stronger control measures comes up regularly. There is a perception out there that people are being targeted. There have been many comments about the rising fear in clients 'to do anything or to do nothing'. They are

afraid that doing nothing will result in loss of payment but find it difficult to engage with the system. The INOU strongly believes that the incidences of error could be greatly reduced if the local DSP office was seen as the place to go to address any questions and issues requiring clarification. This requires an ethos of pro-active assistance, a culture of working with people, an environment that is welcoming and informative.

In the rest of this submission specific recommendations are made on areas that if not properly addressed can result in control and / or fraud issues; as well as procedures the INOU would call on the Department to follow when dealing with suspected fraud.

Commencement of Employment

The INOU strongly recommends that the Department review its use of IT services to support jobseekers accessing temporary or casual employment where it is not possible to directly contact the Department. Provision of such services would directly address the Department's concerns around the issue of concurrent working and claiming.

In making such recommendations it is important to note that the Department itself acknowledges that:

- *The perceived difficulty in reporting changes in circumstances, for example, in means tested schemes and especially with regard to short time and casual work, may encourage people into fraudulent behaviour (2.2 DSP Fraud Initiative 2011 – 2013)*
- *Low levels of awareness and a lack of clear understanding of the conditions for receipt of payments can consequently lead to fraud or error (2.2 DSP Fraud Initiative 2011 – 2013).*

This is further echoed by the Examples of Staff suggestions to Combat Fraud (Appendix 3) – Department of Social Protection Fraud Initiative 2011 – 2013.

At present there is no formal mechanism, apart from direct contact with a local DSP office in person or by telephone, available to claimants to advise the Department of their intention to take up employment. Given the very often short-term notice of opportunities and almost immediate start date for employment, claimants are left with very little opportunity to officially notify the department of their intentions.

Both anecdotal evidence proffered by clients, and other organisations, and cases dealt with directly by the INOU have highlighted the difficulties experienced by clients in attempting to access their local DSP office, in person or by telephone.

The INOU would recommend that the Department would:

- provide a dedicated secure online form on the DSP website which would allow customers to notify the Department where they are about to take up employment but have been unable to attend a DSP office to advise of a change in their circumstances. Any such system/form could be associated with the Departments existing *FastTrack* system for Jobseekers to ensure minimal administration and process of reinstatement of any claim.
- provide a dedicated text number where customers can identify where they intend to take up employment i.e. text the word 'work' to signify the person is availing of an opportunity to engage in employment where it was not possible to contact the Department directly. The customer should receive a reply confirming receipt of their text advising them to call into the local Social Welfare office on completion of employment with details of the employment. This could also be linked to the Departments existing *FastTrack* system for Jobseekers.

Recovery of Overpayment

The INOU strongly recommends that the Department would review its policy on the application of Attachment of Earnings notices directly to employers.

The INOU is concerned that receipt of such notice by an employer could unduly and unnecessarily prejudice any current and future prospects for continued employment for the person subject to the notice.

Under normal circumstances the legal recovery of monies where a debt is owed is authorised by the Courts system. Where an employer receives such attachment notice through the court system it does not specify the cause or reason for such debt. This debt could have arisen from a variety of circumstances including outstanding maintenance payments, loan repayments, hire-purchase agreements, traffic/parking fines and other penalties etc. and, it would be reasonable to suggest, would not necessarily, in the normal course of events, unduly reflect on the veracity, reliability or honesty of an employee.

However, where such notice is issued directly by the Department of Social Protection there is an inherent and implied connotation, given that employers will not receive any information or clarification as to the cause or reason for the resulting debt to the Department, that this debt 'more than likely' relates to some type of nefarious or fraudulent activity on the part of the employee.

It would be generally accepted that the Department's overarching emphasis is to not only support the return to work of jobseekers, and those of working age, but to actively promote the

long-term sustainability of such employment as evidenced by the number of direct, and indirect, back to work supports and initiatives provided by the Department.

It is therefore essential, in cases where the Department are not actively seeking formal prosecution of what technically constituted a fraudulent offence, that any action taken by the Department in seeking to recover any outstanding debt does not undermine or impede the claimant's ability to seek, obtain or sustain employment in the longer term.

The INOU would contend that Attachment of Earnings notices issued by the Department of Social Protection could constitute a grave and onerous 'threat' to a person's continued employment in that

- receipt of an Attachment of Earnings by an employer may directly prejudice the continued employment of an established employee
- receipt of an Attachment of Earnings may directly prejudice the employment of a new employee, particularly one under any probationary period with a new employer.

The INOU would recommend that the Department would not seek to directly issue any Attachment of Earnings notice where no prosecution is being sought, and that the Department would instead seek to pursue all recovery of overpayments through existing legal processes already established for the recovery of debts.

It would be further recommended that the Department would undertake consultations with the relevant employer organisations to determine the likely impact receipt of such 'notices' would have on their members, and the potential impact on the continued employment of an employee subject to such notice.

The INOU also recommends that where a claimant, or ex-claimant, is engaged with the Money Advice and Budgeting Service (M.A.B.S.) in addressing debt that the Department should:

- engage with the client and MABS *before* making any statutory/mandatory deduction from their Social Welfare payment.
- work with MABS and the claimant to identify and establish a reasonable and practical level of statutory deduction based on any debt management plan determined by MABS.

ICT and good information

The Department has stated that one of its major priorities is to ensure that *'it pays the right person the right amount of money at the right time'*. Integral to this the Department must

commit to using technology to raise awareness of available supports: in particular those designed to encourage the take-up of employment.

The Department has highlighted its use of data matching for fraud and control purposes. The INOU would contend that such data matching process would also lend themselves in support of the promotion of, and application of:

- *Claimants Signing-Off*: Where a claimant signs off from a Jobseekers payment, or other payment of working age, or other supported scheme (CE, TUS, etc.) said client should automatically receive notification of available back to work supports e.g. FIS, JobsPlus, Part-time Job Incentive Scheme, Back to Work Enterprise Allowance and the Short-Term Enterprise Allowance.
- *Family Income Supplement*: Automatic notification of FIS where a claimant has signed off from a Social Welfare payment and has qualified dependent children and has registered with Revenue as an employee.
- *Continued Child Payment*: Automatic notification of the Continued Child Payment where a person has been in receipt of Jobseekers Benefit, Jobseekers Allowance or has been on Community Employment Scheme for 12 months or more *and* they subsequently enter into full-time paid employment (data matching with Revenue) or self-employment (data matching with Revenue or CRO) which is likely to last 4 weeks, and can keep the child portion of your payment for 13 weeks. In addition such claims should also be automatically added to the FastTrack system.

Complexity

The Department has identified that research undertaken on welfare fraud suggests that complexity within social security systems can cause or contribute to welfare fraud. (2.1 DSP Fraud Initiative 2011 – 2013).

Given the conditional complexity of certain social welfare payments, particularly in light of the interactive relationship between means tested primary payments and income from employment, and means tested secondary benefits, it is clear that instances of what could be described as ‘technical fraud’ i.e. Concurrent Working & Claiming, Non-disclosure of means and Life Events, could be reduced by the provision of comprehensive information supports for claimants.

While it is accepted that logistical and operational restrictions limit the scope of the Department to provide such services directly, it is important to note that such services currently exist, in large part funded directly by the Department.

Bearing this in mind the INOU would recommend the following:

- *Letters and Forms:* That all letters, forms and communications from the Department to clients highlight the availability of free, confidential and impartial information services available through the network of CIC offices throughout Ireland.
- *Appeals:* The Department automatically provide information on services that support clients in preparing and attending Social Welfare Appeals.
- *Signposting:* That each DSP/Intreo Office display material identifying local information and support services, such as Citizens Information Centres and other local groups.
- *Referral:* That Department staff in public offices actively promote and refer clients to local information and service providers, i.e. Citizens Information Centres etc.,

Good practice in addressing fraud

Where a claimant is suspected of having committed a fraudulent offence, pursuant to any claim made to the Department of Social Protection under the relevant Acts, they may be requested to attend interview by officers of the Department. To that end the INOU would make the following recommendation to the Department of Social Protection.

Interview may be conducted in DSP offices under caution, such caution been given in consideration of any refusal/suspension or payment, recovery of overpayment and legal prosecution of an offence in the civil or criminal courts.

In the event of any appeal against refusal/suspension of payment or prosecution for fraud any records, notes or statements taken by DSP officials during interview may be relied upon as evidence in pursuance of such appeal or prosecution.


It is therefore essential that the Department have in place relevant and appropriate information, material and procedures mindful of the claimant's rights in the context of due process, natural justice and fair procedure and the Departments underlying legal obligations as per current legal practices and established legal precedents.

As such, in absence of any current material, guidelines or procedures, the INOU would make the following procedural recommendations:

- Prior to any interview under caution the claimant should be formally advised in writing of the purpose of the interview, if the interview will be conducted under caution, the purpose of conducting the interview under caution, their rights to decline attendance at interview and any penalties incurred by failure to attend interview;

- The claimant should be clearly informed of any underlying inherent right or right by established precedent, to have legal counsel or any other named representative present at such interview;
- Wherein a claimant advises of mental incapacity or disability which could unduly affect their ability to adequately present fact or engage in the interview, or where such is apparent by the nature of any payment by the Department or medical evidence provided to, or in the possession of, the Department, that facility be granted for the attendance of a representative ‘*ad litum*’ in support of the claimant during any interview;
- The Department, under General Guidelines and Best Practice Procedures, should adopt and implement what are commonly referred to as ‘Judges Rules’ for interviews and statements under caution, as accepted by other state agencies, most notable Revenue¹;
- Any official caution should be reaffirmed at the beginning of the interview and note taken that the claimant has acknowledged the caution has been administered;
- The claimant should be afforded the right of full and complete disclosure of documents, as afforded under the Department’s *Guidelines for Decision Making and Natural Justice*, prior to any such interview, wherein such does not require an application under the Freedom of Information;
- The claimant should be presented with any records or notes of the interview at the conclusion of the interview. The claimant should be invited to sign the records or notes to confirm that they are a true and accurate reflection of the content of the interview. The claimant should have the right to refuse to sign such records or notes where, in their opinion, said records or notes are not a true or accurate reflection of the interview. Any refusal to sign the records or notes should be noted;
- The claimant should have the right to request that any inaccurate or incomplete information contained in said records or notes are corrected or amended, and a record of such request be made;
- The claimant should be advised of any procedure or process that the Department may undertake stemming from the interview.

Thank you for your time and consideration

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¹ Ref: <http://www.revenue.ie%2Fen%2Fabout%2Ffoi%2Fs16%2Finvestigations-prosecutions-enforcement%2Fenforcement%2Fchapter02.pdf%3Fdownload%3Dtrue&ei=xjcXU7r0B4mQhQfYyYB4&usg=AFQjCNGB3HhMsZChxpg-23QeSVav6qKxtw&bvm=bv.62286460,d.ZG4>