Dear Frank

Personal independence payments: Upper tribunal ruling

Thank you for your letter dated 19 April 2018. Please find the answers to your questions below.

1. Explain whether you would consider a sample of 64 cases to be a sufficient basis for a Department making such a large spending decision

It is beyond our statutory remit to comment on whether the evidence base for a spending decision was ‘sufficient’ – the Charter for Budget Responsibility explicitly proscribes "normative commentary on the particular merits of government policies". Such matters are for the spending Department, the Treasury and the National Audit Office.

We can of course comment on the evidence in respect of our forecasts, where the decision was incorporated as follows:

- DWP announced on 23 February 2017 that it would respond to the original ruling by changing the PIP regulations "to restore the original aim of the benefit".¹ We factored this into our March 2017 forecast. Based in part on the evidence of the targeted sampling exercise of 64 cases, plus the advice of DWP medical advisers, we expected it to cost £0.1 billion in 2017-18, with no further costs in subsequent years (paragraph 4.122 of our March 2017 Economic and fiscal outlook (EFO)).

- We also noted that absent the Government’s policy response, the ruling would have raised spending in 2021-22 by £0.9 billion and by £3.7 billion across the forecast (the figure you cite in your letter). We explained at the time that this was a ‘static estimate’ assuming no behavioural response from potential claimants. As the Treasury chose not to include the effects of DWP’s February 2017 announcement on the Spring Budget 2017 ‘scorecard’, we did not assign a formal uncertainty ranking to it. The underlying costing methodology was first used in our forecast in March 2016

¹ [https://www.parliament.uk/business/publications/writer-questions-answers-statements/written-statement/Commons/2017-02-23/HCWS495/](https://www.parliament.uk/business/publications/writer-questions-answers-statements/written-statement/Commons/2017-02-23/HCWS495/)
in the costing of the 'Personal Independence Payments: aids and appliances' measure (that was subsequently dropped before implementation). We assigned that scorecard costing a 'medium-high' uncertainty ranking, noting that "the experience of recent years illustrates the uncertainty that surrounds such estimates." (paragraphs 4.116 to 4.117 of our March 2016 EFO).

- The more recent High Court ruling that the revised PIP regulations were unlawful – and DWP’s decision not to challenge that ruling – was factored into our March 2018 forecast. The estimated cost of complying with the ruling – around £0.4 billion a year on average – was based on evidence from the larger sample of 1,915 cases (paragraphs 4.111 and 4.112 of our March 2018 EFO). We noted that these were "provisional estimates based on samples of affected cases and preliminary views on how to implement the court ruling" and that "DWP is working with relevant parties to develop final PIP guidance consistent with the ruling, so these estimates can be expected to change".

2. Explain the OBR’s procedure for deciding whether an estimate of Departmental spending is a reasonable assessment? a) what quality control is carried on Departmental spending estimates?

In Briefing Paper 6: Policy costings and our forecast we describe the procedures we follow when assessing Departmental estimates of the cost or yield of policies that are announced in Budgets and other fiscal statements. The high-level process is outlined in paragraphs 2.8 to 2.16, while our approach to dealing with estimates that are highly uncertain – such as in this case – is discussed in paragraphs 3.22 to 3.27.

We endeavour at all times to produce a central estimate of the impact of particular policy decisions, based on the available evidence and accompanied by an assessment of the uncertainty that surrounds it.

In both instances when we have looked at the effects of these PIP-related rulings, the DWP sample exercises represented the best evidence available at the time. Clearly the results from a sample of 64 cases will be subject to much greater uncertainty than a sample of 1,915 cases, but in this instance there was no basis to conclude ex ante that the results of the smaller sample would be biased in one direction or another. Ex post, the evidence from the larger sample suggests that the smaller sample was biased upwards in terms of its implications for spending. The true cost will remain uncertain even in hindsight since it will never be completely clear what would have happened in the absence of the ruling.

Best regards,

Robert Chote
Chairman