

28th July 2020

Minister Heather Humphreys TD,
Minister for Social Protection, Community, Rural Development and the Islands,
Department of Employment Affairs and Social Protection,
Áras Mhic Dhiarmada,
Store Street ,
D01 WY03.

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

Dear Minister,

Congratulations on your appointment and we wish you well and every success.

FLAC have been contacted by a number of individuals and NGOs concerning the reported sanctioning of people in receipt of the Pandemic Unemployment Payment (PUP), who took holidays abroad. We note that your Department has adopted a policy by way of Departmental Circular, which purports to allow for the suspension of certain social welfare payments in circumstances where a claimant leaves the State.

Our legal team lead by FLAC's Managing Solicitor, Sinéad Lucey has examined the relevant legislative provisions. In summary her analysis is that 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 the 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) does not exclude the possibility of taking a holiday abroad. As with Jobseeker's Allowance and Supplementary Welfare Allowance, the relevant criteria for access to that payment is that the applicant be resident in the State.

Chief Executive – Eilis Barry

We note that while the application form for the Covid Pandemic Unemployment payment makes no reference to disqualification of entitlement to the payment during absences from the State, or to a requirement for claimants to be Genuinely Seeking Employment (GSE), the Department's website in relation to the payment now includes reference to such criteria. We would therefore ask for clarity as to the exact eligibility criteria which apply to that scheme and clarification as to whether those additional criteria do not apply to claimants who accessed the payment before their addition to the scheme.

The Department's policy also implies that those who are advised 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 Supplementary Welfare Allowance 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 not to be genuinely seeking employment.

Finally, we note the provisions of the Social Welfare (Consolidation) Act 2005 in relation to the powers of Social Welfare Inspectors at airports. While section 250 (16B) of that Act gives inspectors the power to question persons at airports under certain circumstances, we note that that such powers can only be exercised where the Inspector has "reasonable grounds" to believe the person in question has breached the 2005 Act.

In the circumstances, we are asking that Circular No. 35/20 be withdrawn and further we are seeking confirmation that claimants will not be sanctioned financially in respect of taking holidays abroad. A note of our legal team's advices is attached.

We are happy to meet with you to discuss this further.

Your sincerely



Eilis Barry, FLAC Chief Executive