

**odsc**

Office of the  
**Discretionary  
Support  
Commissioner**

Report for the period  
1 April 2018 – 31 March 2019

# Report for the period 1 April 2018 – 31 March 2019



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# Foreword



Dear Permanent Secretary

xx June 2019

As Discretionary Support Commissioner, I am required to present an Annual Report under the provisions contained in Article 136(6)(d) of the Welfare Reform (Northern Ireland) Order 2015.

This is my third report, which covers the 12-month period of operation from 1 April 2018 to 31 March 2019.

It is evident to me that Discretionary Support is continuing to make a vital contribution in

Yours sincerely

A handwritten signature in black ink, which appears to read "Walter Rader". The signature is written in a cursive style with a long, sweeping underline.

Walter Rader OBE MA Dip YCS  
**Discretionary Support Commissioner**

support of the most vulnerable and those most in need across Northern Ireland.

This report sets out the context in which the Office of the Discretionary Support Commissioner operates and the work undertaken during the 12-month period ending 31 March 2019, together with conclusions and observations.

# Executive Summary

During the period covered by this Report – 1 April 2018 to 31 March 2019:

- The Office of the Discretionary Support Commissioner (ODSC) has been fully operational
- The Commissioner has visited the Antrim-based Teleclaim Service Centre and Review Hub
- ODSC has had a welcome seat on the Discretionary Support Change Control Group (guidance)
- ODSC has carried out 132 Independent Reviews at the request of claimants
- Systems and processes have been refined, in light of use, to ensure that the Independent Review Service is efficient and effective
- ODSC was internally audited and has received a fit-for-purpose rating. Recommendations have been actioned
- Analysis of the work of Inspectors is provided and Commissioner’s conclusions and observations are set out



**Left to Right:** Mark Egan, office manager; Inspectors, Amy Lucas, Fiona Douglas, Darren Todd and Gary Toner

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# Introduction of Discretionary Support Arrangements

1. Discretionary Support is administered by the Department for Communities (the Department). The Welfare Reform (Northern Ireland) Order 2015 makes provision for the Department to make payments by way of grant or loan to prescribed persons. Those arrangements constitute the provision of Discretionary Support, which is available only in Northern Ireland. Arrangements came into operation on 28 November 2016.

1.1 To access Discretionary Support (DS), a claimant must have had an “extreme, exceptional or crisis situation” which places their, or a member of their

immediate family’s, health, safety or well-being at significant risk. If eligible, the claimant may be offered Discretionary Support in the form of a loan or grant. If the claimant is unhappy with a Discretionary Support decision, they have the right to ask for a review within 28 days of the initial decision. The first review is carried out by a departmental Review Officer (RO). If the claimant is unhappy with the outcome of the First Review, they can ask for a further review by the Discretionary Support Commissioner, who is independent of the Department.

[\[see Para. 7, Diagram A\]](#)

## Appointment of a Discretionary Support Commissioner

2. The Welfare Reform (Northern Ireland) Order 2015 makes provision for the appointment of a Discretionary Support Commissioner. The Commissioner is an independent statutory office-

holder appointed by the Department for Communities. The independence of both the Commissioner and his reporting is paramount to the role.

2.1 As detailed in the Welfare Reform (Northern Ireland) Order 2015, the Commissioner's role is:

- to monitor the quality of decisions of Discretionary Support Inspectors and give them such advice and assistance as the Commissioner thinks fit to improve the standard of their decisions
- to arrange such training of Discretionary Support Inspectors as the Commissioner considers necessary
- to carry out such other functions in connection with the work of Discretionary Support Inspectors as the Department may require
- to report annually in writing to the Department on the standards of reviews by Discretionary Support Inspectors

2.2 Under the Welfare Reform (Northern Ireland) Order 2015, the Department is required to publish the Commissioner's Annual Report

## Provision of Resources

3. The Commissioner appoints Discretionary Support Inspectors and other staff from persons made available to him by the Department so that his statutory duties can be discharged. That includes an office manager, appointed to support the Commissioner in the running of his office, Inspectors, and administrative support. All staff are Northern Ireland Civil Servants and are subject to NICS terms and conditions.

While attached to the Office of the Commissioner, staff are required to operate in an independent role.

3.1 The Department provides for the running costs of the Commissioner's office through the normal departmental budget allocation process. Accommodation and services, for example, IT support and internal audit, are provided by the Department.

## Relationship Statement

4. A Relationship Statement has been agreed between the Discretionary Support Commissioner and the Department and governs interaction between the two entities. The Relationship Statement

records the statutory basis for the post of Commissioner and sets out the functions of the office, together with planning and reporting arrangements operated by the Commissioner.

## Context

5. I took up post as the first Discretionary Support Commissioner on 1 September 2016. This report covers the operation of the Independent Review Service for the period from 1 April 2018 to 31 March 2019.

5.1 I wish to acknowledge the staffing arrangements put in place by the Department. I recognise my responsibility both for staff training and in supporting

career development. I wish to encourage staff to realise their full potential, including developing new skills and gaining additional experience that will be transferrable to future roles. I also want to ensure the efficient and effective delivery of the Independent Review Service, and to that end systems and processes are reviewed regularly.

## Business Purpose

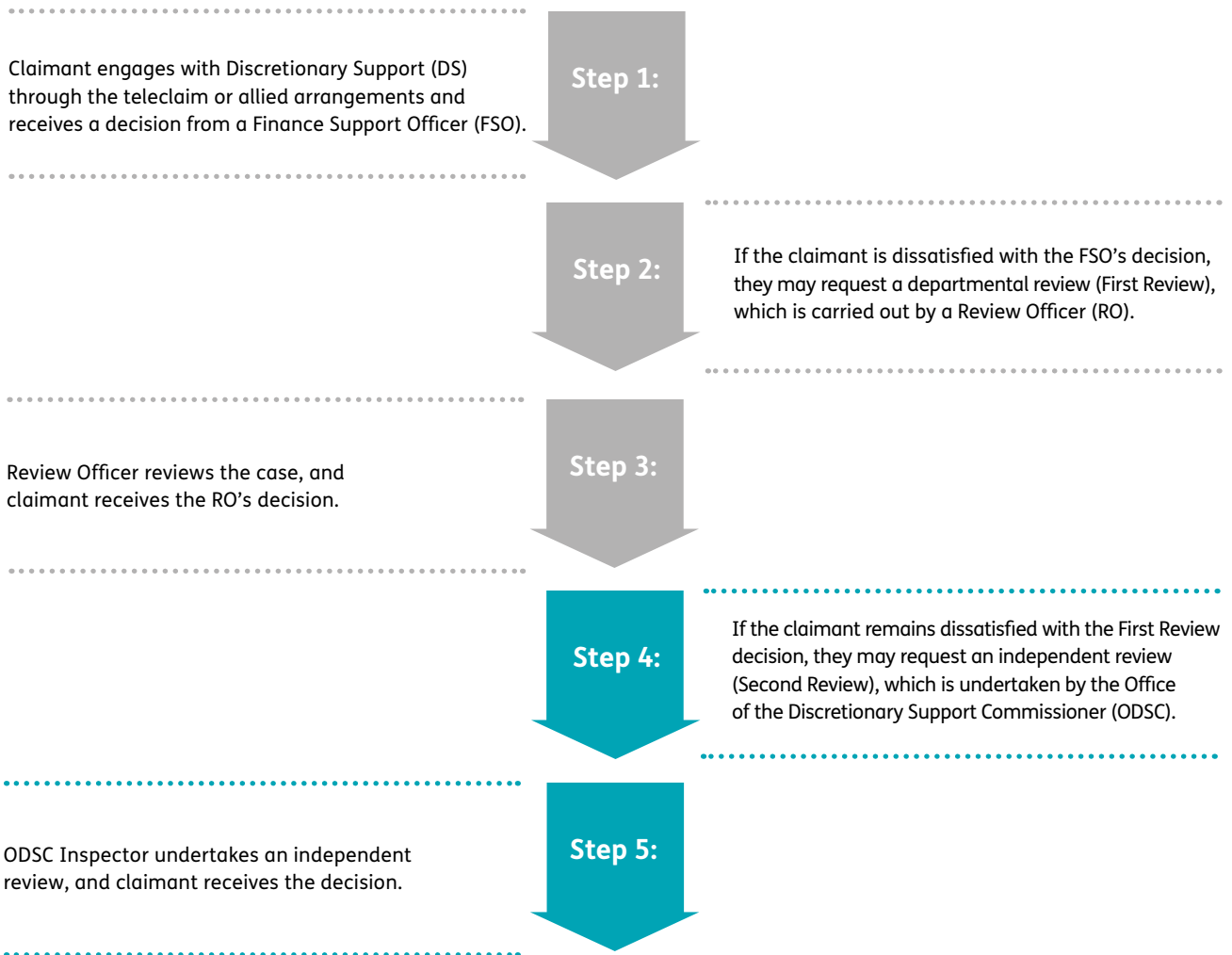
6. The purpose of ODSC is to deliver an Independent Review Service for claimants who are dissatisfied with the outcome of the First Review decision made by a

departmental Review Officer. ODSC Business objectives and values are set out in [Annex 1](#).

# The Discretionary Support Independent Review Service

7. The Independent Review Service is part of a five-step process as set out at steps 4 and 5 of Diagram A below:

## Diagram A





# Report on the work of the ODSC Inspectors during the period 1 April 2018 to 31 March 2019

## Northern Ireland Claims and Reviews

8. During the 12-month period covered by this report, details of the total claims received across Northern Ireland, First Reviews undertaken by the Department, and independent, Second Reviews carried out by ODSC are set out in Table 1 below:

**Table 1**

Item	Number	Context
R1	81,621	The total number of Discretionary Support claims dealt with by the Department
R2	4,284	The number of claimant-requested First Reviews carried out by the Department, which represents 5%* of the total claims as set out in R1
R3	132	The number of independent Second Reviews requested by claimants and carried out by ODSC Inspectors, which represents 5% of RO First Reviews at R2

[\* Percentages are rounded up or down to the nearest whole number, whereby under 0.5% is rounded down and over 0.5% is rounded up]

## Standard of Discretionary Support Inspectors' Decisions

9. As Commissioner, I have a statutory duty under Article 136 of the Welfare Reform (Northern Ireland) Order 2015 to monitor the quality of Inspectors' decisions and to give them advice and assistance to improve the standard of their reviews.
- 9.1 My team of Inspectors carries out reviews, as requested by claimants, of the decisions made by the Department's Discretionary Support Review Officers. [\[Para. 7, Diagram A, Steps 4 and 5\]](#)

# Case Reading

10. Case reading is the primary means by which I assess the standard of Inspectors' decisions and reports. In order to foster a consistent approach and to feed my findings to the Discretionary Support Change Control Group when required, I have decided to continue to read 100% of the case reviews undertaken.
- 10.1 My findings and advice are fed back to individual Inspectors, either by the office manager or through direct dialogue between myself, as Commissioner, and the individual Inspector. That process is augmented by additional training, staff meetings, and peer-review sessions.
- 10.2 As the Inspector's independent review decision is the final resolution, it is vital that Inspectors deliver high-standard decisions of which monitoring processes are robust.
- 10.3 In addition to complying with the Discretionary Support Regulations and departmental guidance (which, for the avoidance of doubt, are the same as those which apply to FSOs and ROs), Inspectors' decisions must be based on the evidence and the facts in order to ensure that justifiable decisions are reached in each case.
- 10.4 All those who use the Independent Review Service have a right to know the reasons why the Inspector reached the decision in "their particular case". Inspectors' decisions must, therefore, be presented in plain language and in a concise manner. During my reading of cases, I consider whether the decision is justified, based on the evidence and facts of each case, and whether the decision is in keeping with the DS Regulations and departmental guidance. In addition, I consider the clarity of the report to ensure that it avoids jargon and communicates the reasons for the decision clearly and concisely to the claimant.
- 10.5 Although this is my third report, it remains early days regarding this new benefit and the associated process systems. The departmental decision-making officers and ODSC Inspectors implementing the DS Regulations and guidance are gaining valuable experiential learning and honing skills. In doing so, they are both justified, and indeed required, to use their judgment and discretion in arriving at, and justifying, the decisions that they make.

10.6 My role as the Independent Commissioner affords me a unique overview of DS implementation. I maintain a clear understanding of the Discretionary Support system and process end-to-end, which enables me to ensure that my Inspectors are delivering relevant and timely reviews. To that end the Discretionary Support Inspectors and I visited staff and management in the Antrim and Dungannon Service Centres. Those are the two hubs operating the

Telephony and IT Teleclaim system for Discretionary Support claimants. Antrim also encompasses staff providing the departmental review process. We have also participated in DS team meetings.

10.7 I have undertaken 132 case readings during the 12-month period covered by this report, which represents 100% of the cases dealt with by Inspectors. My findings are set out in Table 2 below:

**Table 2**

ITEM	NUMBER	CONTEXT
R4	127	Decisions taken by ODSC Inspectors were correct, based on the evidence and facts of the cases, which represents 96% of all independently reviewed cases <a href="#">[R3 of Table 1]</a>
R5	5	Cases where the Commissioner required clarification by the Inspector as referenced at R6 and R7 below, which represents 4% of the total cases independently reviewed <a href="#">[R3 of Table 1]</a>
R6	3	Cases [of the five at R5] where the Commissioner required the Inspector to seek further clarification from the claimant in respect of the evidence / facts of the case, which represents 2% of the total cases independently reviewed <a href="#">[R3 of Table 1]</a>
R7	2	cases [of the five at R5] where the Commissioner required the Inspector to explain in greater detail how, based on the evidence / facts available, DS Regulation10(1)(a) had been satisfied, which represents 2% of total cases independently reviewed <a href="#">[R3 of Table 1]</a>

# Delivery Targets

11. Casework delivery targets were not included in either the DS Regulations or departmental guidance for ODSC Inspectors. As Discretionary Support is unique to Northern Ireland,

I, as Commissioner, set clear and challenging casework targets based on our performance ability from the previous year, as set out in Table 3 below:

**Table 3**

ITEM	NUMBER OF DAYS	CONTEXT
R8	1	Urgent case review process (e.g., following a disaster as detailed in the DS Regulations)
R9	10	Standard case-review process
R10	16	Complex case-review process

# Performance against casework targets – 1 April 2018 to 31 March 2019

12. Inspectors have worked to the clear set of casework targets in Table 3 during the period. The results are set out in Table 4 below:

**Table 4**

ITEM	NUMBER	CONTEXT
R11	32	Urgent review cases cleared within the target [Target at R8 of Table 3]
R12	97	Standard review cases cleared within the target [Target at R8 of Table 3]
R13	3	Complex review cases cleared within the target [Target at R8 of Table 3]

13. Having operated the Independent Review Service during the reporting period, I intend to maintain the casework delivery targets for the coming year and shall set out the deadlines in the ODSC Business Plan 2019/20.

# ODSC Inspectors’ Review Outcomes during the reporting period

14. In undertaking their Independent Review Service duties (Second Review), ODSC Inspectors have reached decisions resulting in the actions set out in Table 5 below:

**Table 5**

ITEM	NUMBER	CONTEXT
R14	10	Cases where Inspectors changed the decision made by ROs from disallowance of DS to an award of a DS grant,* which represents 8% of total cases independently reviewed
R15	7	Cases where Inspectors changed the decision made by ROs from a loan to a grant,* which represents 5% of total cases independently reviewed
R16	4	Cases where Inspectors changed the decision made by ROs not to award a DS loan to the award of a DS loan,# which represents 3% of cases independently reviewed
R17	5	Cases where Inspectors decided that regulation 10 was satisfied and returned cases to the ROs to consider regulation 11 (Loan eligibility) or regulation 12 (Grant eligibility), which represents 4% of the cases independently reviewed
R18	106	Cases where inspectors upheld the decisions made by the departmental Review Officers, which represents 80% of the cases independently reviewed

[\* The total additional spend from the DS budget resulting from R14 and R15 was £10,072.59 in grants.]

[# The total additional loan spend from the DS budget resulting from R16 was £760.22.]

[\*# The ODSC does not hold a budget for the loan or grant decisions made by Inspectors; such awards come from the DS central budget. Therefore in the reporting period Inspectors’ decisions resulted in additional spend from the DS budget of £10,832.81.]

## Actions taken by ODSC

15. During the reporting period my office provided feedback to the Department on our findings and the trends that we observed in relation to the cases reviewed by the Inspectors. During the period of this report ODSC has:
- Made improvements in the standard of our work, taking into account the views of our stakeholders and reflective learning from the case-reading process
  - Maintained a learning log as the basis of shared learning and advice
  - Provided advice and information to the public, claimants and their advisers, and staff of the Department about Discretionary Support, the role and work of ODSC, and the right of claimants to seek an independent (Second Review) Discretionary Support review
  - Provided advice to the DS Change Control Group (guidance) to improve departmental guidance and processes
  - Supported the Department to improve standards of Discretionary Support decision-making and operational delivery through feedback, advice and attendance at DS management / staff meetings
  - Focused business resources to achieve the most efficient and effective outcomes, delivering value for money

## Resources

16. During the reporting period, ODSC was allocated funding by the Department for salaries of £175,000. In addition, there was funding of £6,000 to provide for travel and subsistence, staff training and development, postage and stationery. The Department also provides accommodation and internal audit functions.
- 16.1 I can confirm that ODSC has delivered the Independent Review Service to casework targets and achieved modest in-year savings. I shall continue to monitor budget allocation and casework targets over the coming year.

## Conclusions and Observations

17. As Commissioner, I am privileged to have a unique, independent overview of Discretionary Support processes. I offer the conclusions and observations set out below from that independent perspective. My Office stands ready to discuss these matters as a contribution to the efficient and effective development of Discretionary Support delivery.

## Justification of Decisions

18. As Commissioner I take the view that, in the interests of natural justice, it is a requirement for both departmental DS decision-makers and ODSC Inspectors fully to justify the decisions set out in their respective reports. It is vital that decisions be clearly written and easily understood by claimants, their representatives / support workers, and the officers subsequently involved in the case.
- 18.2 I reported on this issue last year, and I am pleased to have noted an improvement in the quality of reports over the period. I encourage DS Staff and Inspectors fully to justify decisions in their reports.

- 18.1 As decision-makers become familiar with DS processes, a “shorthand” or “abbreviated” form of report-writing may tend to be adopted. That approach should be avoided. Without clearly set-out justifications, it can be challenging for claimants, ROs, Auditors and Inspectors to understand how a decision was arrived at or is being justified.

I encourage decision-makers to state clearly that a regulation was met or not met and, in addition, to set out briefly their justification as to “why” it was met or not met

- 18.3 As Commissioner I support the audio recording of the teleclaim process. I take the view that it protects the interests of both claimants and departmental staff. Audio recordings have been a valuable point of reference



for ODSC Inspectors throughout the reporting period. That applies not only to an Inspector's consideration of a case but, in particular, where a claimant disputes "who said what".

- 18.4 Following the internal audit of ODSC, a recommendation was made to extend the scope of the audio-recording process to include Inspectors within ODSC. I have agreed implementation of the recommendation and have secured funding from the Department to take that forward in the incoming financial year.

- 18.5 I welcome the establishment of the DS Change Control Group (guidance) (DSCCGg), on which my office has a seat. The group is, in my view, an essential forum in which to consider DS developments in a structured and objective manner. The link with DSCCGg provides a pathway for my office to draw matters to the attention of the group that would otherwise have to await publication of my Annual Report. During this reporting year, there have been several changes or clarifications to the existing departmental guidance. That I regard as positive.

## Loans

19. The DS outstanding debt threshold, encompassing both legacy debt and DS loan debt, is set by the Department [Part 6, reg. 21(4)]. Where a claimant exceeds the threshold for outstanding debt, they cannot access loans from DS. It has been stated that the DS threshold, currently set at £1,000, helps manage down claimants' debt levels.

- 19.1 ODSC has identified a trend, once again over the reporting period,

which seems to indicate continuing high levels of claimant "legacy debt", up to almost £1,500 in some cases. In such cases, it is frequently noted that the claimant does not have DS debt.

- 19.2 As a result of further investigation, ODSC has established that the source of the legacy debt would appear to be budgeting loans. As Commissioner, I observe that the ongoing existence of budgeting loans is supporting higher levels of legacy debt, in excess

of the DS threshold. That prevents claimants from accessing DS loans, an example of two separate sets of benefit Regulations, or operating requirements, seeming to be in conflict.

As Commissioner I continue, as reported in my findings last year, to take the view that two elements of benefits (budgeting loans and the DS debt threshold, the latter with a stated aim of managing down claimants' debt) are demonstrably in opposition. I am aware from my contact with DSCCGg that this anomaly is being considered as part of the current policy review.

19.3 During this reporting period I have become aware of a further inhibitor to claimants accessing DS Loans. The issue would appear to be a consequence of the claimant applying for, or being transferred to, Universal Credit (UC). The situation is that where the claimant is in the first or second UC assessment period they cannot avail themselves of a DS Loan, which might otherwise be an option for them, a further example of two separate sets of benefit Regulations, or operating requirements, seeming to be in conflict.

# Income threshold

20. I noted in last year's report, and I remain concerned, that as part of DS there is a threshold set for Income and Earnings: Regulation 15. During the period covered by this report, I have again reviewed several cases where the family income threshold has been exceeded, thus preventing access to DS.

20.1 The income threshold set for the reporting period was £16,286.40. That figure was applied to both individuals and family units. Thus an individual claimant living on their own was subject to the same income threshold as a family unit.

20.2 Where a family unit claimed Child Tax Credit (CTC), there was a correlation between the payment of CTC and the family income exceeding the DS threshold. Claimants continue to argue that CTC was a payment in relation to a child or children and that they felt penalised because it was not disregarded under DS.

20.3 When DS was introduced, it was said that this new, Northern Ireland-only, mitigation would be available to low-

income families. The departmental Discretionary Support Eligibility Guide Part 1, para. 1 states "Through Discretionary Support (DS) the Department aims to alleviate the most extreme, exceptional or crisis situations which present a significant risk to the health, safety or well-being of low income and vulnerable households through the provision of financial support."

As Commissioner, I take the view that the application of a single threshold to both an individual and family units is at best unfair and at worst discriminatory. I take the view that this matter should be addressed. There may be merit in considering an income threshold for an individual and a higher one for family units. I again invite DSCCGg to consider the matter.

## Disasters

21. I issued advice to my Inspectorial team about how the determination of “disaster” may, based on the evidential circumstances, be interpreted more broadly than the scope detailed within the departmental guidance. I shared my view with the Department, and I

welcome the fact that this matter has been taken up by the DSCCGg, which sought advice from the Departmental Solicitor’s Office. I encourage DSCCGg to set a date by which departmental guidance will be updated.

## Complex cases

22. I note that during the reporting period there have been several complex cases that came to my office. I take the view that this is to be expected as a new benefit rolls out. Such cases have illustrated complexities of personal

circumstances that could neither have been anticipated nor planned for in the development of DS. I consider it to be of assistance that the issues arising from complex cases can be referred to DSCCGg promptly for consideration.

# Office of the Discretionary Support Commissioner

## Business Objectives

- Deliver impartial, independent review decisions to published standards
- Make improvements in the standard of services provided and in doing so seek, and take into account, the views of claimants and stakeholders
- Provide advice and information to the public, claimants and their advisers, to staff of the Department, and to stakeholders, about the role and work of the Office of the Discretionary Support Commissioner (ODSC), highlighting the right of claimants to seek an independent review of a Discretionary Support decision made by a Departmental Review Officer
- Support the Department to improve standards of Discretionary Support decision-making and operational delivery through an annual report and advice
- Focus business resources to achieve efficient and effective outcomes delivering value for money

## Business Values

Business values guide staff in the delivery of their work and focus the contribution made both individually and as a team.

The ODSC business values are to:

- place claimants at the centre of the review process
- treat claimants, stakeholders and colleagues with respect and courtesy
- respect and accept the differences of others in accordance with Section 75 obligations
- work to improve standards of service provided for claimants of Discretionary Support
- be receptive and responsive to the external environment and the way it influences and shapes our business future
- engage in reflective learning and use this process to make improvements to the independent review service
- recognise and value the members of our staff team for the contribution each makes in delivering efficient and effective services

